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HUB LAW OFFICES
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Attorney for Defendant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. 157 680 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ARMSTRONG'S MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION OF ISSUES** **VOLUME I** Date: September 9, 1994 Time: 9:00 a.m. Dept: One Trial Date: 9/29/94

In support of Gerald Armstrong's motion for summary judgment, or, in the alternative, for summary adjudication of issues, he makes the instant request for judicial notice as follows:

Exhibit A: Pursuant to Evidence Code sections 452 (d)(1) and 453, Church of Scientology's Verified Complaint To Set Aside Fraudulent Transfers And For Damages in the case entitled Church of Scientology International v. Gerald Armstrong, et al., Marin County Superior Court, Case No. 157 680, a true and correct copy of which is attached hereto as Exhibit A.

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Exhibit B: Pursuant to Evidence Code sections 451 (f) and 452 (h), the Gospel According to St. Matthew, Chapter 19, at verses 16 - 30, a true and correct copy of which is attached hereto and incorporated herein as Exhibit B.

Exhibit C: Pursuant to Evidence Code sections 452 (d)(1) and 453, Gerald Armstrong's Verified Answer in the case entitled Church of Scientology International v. Gerald Armstrong, et al., Marin County Superior Court, Case No. 157 680, a true and correct copy of which is attached hereto as Exhibit C.

Exhibit D: Pursuant to Evidence Code sections 451 (a) and 452 (a)(c)(d) and 453 the opinion of the court in Allard v. Church of Scientology, (1976) 58 Cal.App.3d 439, 129 Cal.Rptr. 797, a true and correct copy of which is attached hereto as Exhibit D.

Exhibit E: Pursuant to Evidence Code sections 451 (a) and 452 (a)(c)(d) and 453 the opinion of the court in Wollersheim v. Church of Scientology, (1989) 212 Cal.App.3d 872, 260 Cal.Rptr. 331, a true and correct copy of which is attached hereto as Exhibit E.

Exhibit F: Pursuant to Evidence Code sections 451 (a) and 452 (a)(c)(d) and 453 the opinion of the court filed June 22, 1984, in Church of Scientology of California v. Gerald Armstrong, Los Angeles Superior Court, Case No. 420 153, a true and correct copy of which is attached hereto as Exhibit F.

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Exhibit G: Pursuant to Evidence Code sections 451 (a) and 452 (a)(c)(d) and 453 the opinion of the court filed July 29, 1991, in Church of Scientology of California v. Gerald Armstrong, California Court of Appeal, Second District, Division 3, Case Nos. B025920 & B038975, a true and correct copy of which is attached hereto as Exhibit G.

Exhibit H: Pursuant to Evidence Code sections 451 (a) and 452 (a)(c)(d) and 453, the Second Amended Verified Complaint in Church of Scientology International v. Gerald Armstrong, Los Angeles Superior Court, Case No. BC 052 395, a true and correct copy of which is attached hereto as Exhibit H.

DATED: August 12, 1994

HUB LAW OFFICES

By:
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

HUB LAW OFFICES
Ford Greene, Esquire
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960
(415) 258-0360

#3

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: *(Aviso a Acusado)*
GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation, DOES 1 THROUGH 100, INCLUSIVE

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le esta demandando)
CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

You have **30 CALENDAR DAYS** after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de **30 DIAS CALENDARIOS** *para presentar una respuesta escrita a máquina en esta corte.*

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

CASE NUMBER *(Numero del Caso)*
157,680

The name and address of the court is: *(El nombre y dirección de la corte es)*
Marin County Superior Court
Room 151, Hall of Justice
San Rafael, California 94913

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)
Andrew H. Wilson, Esq. (415) 391-3900
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, CA 94104

DATE: JUL 23 1993 July , 1993 *(Fecha)*

Clerk, by HOWARD HANSON C. HARDING, Deputy *(Actuario)* *(Delegado)*

(SEAL)

SEAL

NOTICE TO THE PERSON SERVED: You are served
1. ☒ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (individual)
☐ other:

4. ☐ by personal delivery on *(date)*:

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, California 94104
(415) 391-3900

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028
(213) 953-3360

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	CASE NO. VERIFIED COMPLAINT TO SET ASIDE FRAUDULENT TRANSFERS AND FOR DAMAGES; CONSPIRACY [C.C. §§ 3302, 3439.07(a)(1),(3)] DATE: TIME: DEPT: DISCOVERY CUT-OFF: None MOTION CUT-OFF: None TRIAL DATE: None

Plaintiff, by its attorneys, Wilson, Ryan & Campilongo and Bowles & Moxon, for its Complaint, alleges:

NATURE OF THE ACTION

1. In December, 1986, plaintiff and defendant Gerald Armstrong ("Armstrong") entered into a settlement agreement ("the Agreement"). The Agreement provided for a mutual release and

waiver of all claims arising out of a cross-complaint which defendant Armstrong had filed in the case of Church of Scientology of California v. Gerald Armstrong, Los Angeles Superior Court No. C 420153. Armstrong, a former Church member who sought, by both litigation and covert means, to disrupt the activities of his former faith, displayed through the years an intense and abiding hatred for the Church, and an eagerness to annoy and harass his former co-religionists by spreading enmity and hatred among members and former members. Plaintiff sought, with the Agreement, to end all of Armstrong's covert activities against it, along with the litigation itself. For that reason, the Agreement contained carefully negotiated and agreed-upon confidentiality provisions and provisions prohibiting Armstrong from fomenting litigation against plaintiff by third parties. These provisions were bargained for by plaintiff to put an end to the enmity and strife generated by Mr. Armstrong once and for all. The Agreement also provided, inter alia, for liquidated damages to be paid by Armstrong should he choose to breach these provisions.

2. In or about February, 1990, Armstrong began to take a series of actions which directly violated provisions of the Agreement. Fearing that plaintiff would seek to collect the liquidated damages owed by his breaches, Armstrong, as set forth below, fraudulently conveyed all of his property, including real property located in Marin County, cash, and personal property to defendants Michael Walton, the Gerald Armstrong Corporation, and Does 1-100, receiving no consideration in return. Thereafter, Armstrong deliberately set out to repeatedly breach the

Agreement, incurring a debt which at present totals at least $1,800,000, and which he has and had no assets to use to satisfy the debt.

3. Armstrong's breaches and resulting indebtedness are presently the subject of two actions pending in Los Angeles Superior Court, Church of Scientology International v. Armstrong, LASC No. BC 052395 ("the First Action"), demanding liquidated damages of $600,000.00 for breaches occurring between July, 1991 and May, 1992, and Church of Scientology International v. Armstrong, LASC No. BC 084642 ("the Second Action"), demanding liquidated damages of $1,200,000.00, for breaches occurring between August, 1991 and June, 1993.

THE PARTIES

4. Plaintiff Church of Scientology International is a non-profit religious corporation incorporated under the laws of the State of California, having its principal offices in Los Angeles, California. Plaintiff CSI is the Mother Church of the Scientology religion.

5. Defendant Gerald Armstrong is a resident of Marin County, California.

6. Defendant Michael Walton is a resident of Marin County, California.

7. Defendant Gerald Armstrong Corporation ("GAC") is a corporation incorporated under the laws of the State of California, having its principal offices in San Anselmo, California.

8. Plaintiff is ignorant of the names and capacities of the defendants identified as DOES 1 through 25, inclusive, and thus brings suit against those defendants by their true names

upon the ascertainment of their true names and capacities, and their responsibility for the conduct alleged herein.

DEFENDANT GAC IS THE ALTER EGO OF DEFENDANT ARMSTRONG

9. Defendant Armstrong is GAC's president and sole officer, its principal shareholder and sole employee, and has been since the incorporation of GAC in 1987. Further, defendant Armstrong has the sole and exclusive right to control the corporation's bank account and its disbursement of funds.

10. Defendant GAC is, and at all times since its incorporation was, the alter ego of defendant Armstrong. There exists, and at all times since GAC's incorporation has existed, a unity of interest and ownership between these two defendants such that any separateness between them has ceased to exist: Defendant Armstrong caused his own personal assets to be transferred to GAC without adequate consideration in order to evade payment of his lawful obligations, and defendant Armstrong has completely controlled, dominated, managed and operated GAC since its incorporation for his own personal benefit.

11. Defendant GAC is, and at all times mentioned was, a mere shell, instrumentality and conduit through which defendant Armstrong carried on his activities in the corporate name exactly as he conducted them previous to GAC's incorporation. Armstrong exercised and exercises such complete control and dominance of such activities that any individuality or separateness of defendant GAC and defendant Armstrong does not, and at all relevant times did not, exist.

12. Adherence to the fiction of the separate existence of

defendant GAC as an entity distinct from defendant Armstrong would permit an abuse of the corporate privilege and would sanction fraud, in that Armstrong transferred his material assets to GAC in 1988, at the time of his embarkation on the campaign of harassment described herein, and with the intention of preventing plaintiff from obtaining monetary relief from Armstrong pursuant to the liquidated damages clause. Hence, GAC exists solely so that Armstrong may be "judgment proof."

THE CONTRACT

13. On or about December 6, 1986, CSI and Armstrong entered into a written confidential settlement Agreement, a true and correct copy of which is attached hereto as Exhibit A, and incorporated by reference.

14. The Agreement was entered into by plaintiff and defendant Armstrong, with the participation of their respective counsel after full negotiation. Each provision of the Agreement was carefully framed by the parties and their counsel to accurately reflect the agreement of the parties.

15. Plaintiff specifically negotiated for and obtained from Armstrong the provisions in the Agreement delineated in paragraphs 7(D), 7(H), 7(G), 10 and paragraphs 12 through 18. Plaintiff took this step because it was well aware, through investigation, that Armstrong had undertaken a series of covert activities, apart from the litigation, which were intended by Armstrong to discredit Church leaders, spark government raids into the Churches, create phony "evidence" of wrongdoing against the Churches, and, ultimately, destroy the Churches and their leadership.

16. Paragraph 7(D) of the Agreement provided, in substance, that Armstrong: (1) would not create or publish, or assist another in creating or publishing, any media publication or broadcast, concerning information about plaintiff, L. Ron Hubbard or any other persons or entities released by the Agreement; (2) would maintain "strict confidentiality and silence" with respect to his alleged experiences with plaintiff or any knowledge he might have concerning plaintiff, L. Ron Hubbard, or other Scientology-related entities and individuals; (3) would not disclose any documents which related to plaintiff or other identified entities and individuals; and (4) would pay to plaintiff $50,000 in liquidated damages for each disclosure or other breach of that paragraph.

17. Contemporaneously with the signing of the Agreement, Armstrong represented that he understood the Agreement's provisions and was acting of his own free will and not under duress.

18. The Agreement also provided that plaintiff CSI would pay to Armstrong's attorney, Michael Flynn, a lump sum amount intended to settle not just Armstrong's case, but the cases of other clients of Mr. Flynn as well, and that Mr. Flynn would pay to Armstrong a portion of that settlement amount. The exact amount of the portion to be paid to Armstrong by Mr. Flynn was maintained as confidential between Mr. Flynn and Armstrong.

19. CSI paid to Mr. Flynn the lump sum settlement amount.

20. Mr. Flynn paid to Armstrong his confidential portion of the lump sum settlement amount, which was at least $520,000, after expenses.

21. The consideration paid to Armstrong was fair, reasonable and adequate. Plaintiff CSI has performed all of its obligations pursuant to the Agreement.

BREACHES OF THE AGREEMENT

22. Beginning in February, 1990, and continuing unabated until the present, Armstrong has breached the Agreement wilfully and repeatedly, including, inter alia, the provisions of Paragraph 7(D) of the Agreement which require Armstrong to pay plaintiff liquidated damages for each such breach.

23. In addition to the breaches of the Agreement which invoke the liquidated damages clause, Armstrong has committed additional violations of provisions of the Agreement which entitle plaintiff to compensatory damages according to proof.

24. Despite demand by plaintiff, Armstrong has refused to pay any damages, liquidated or compensatory, for the deliberate breaches of the Agreement described herein.

25. The breaches described herein are presently the subject of litigation in the First Action and the Second Action, and have not yet been reduced to judgment.

FIRST CAUSE OF ACTION

TO SET ASIDE FRAUDULENT TRANSFER OF REAL PROPERTY

(Against Defendants Gerald Armstrong and Michael Walton)

26. Plaintiff realleges paragraphs 1 - 25, inclusive, and incorporates them herein by reference.

27. On or about August 24, 1990, defendant Gerald Armstrong was an owner and in possession and control of that real property situated in Marin County known as 707 Fawn Drive, San Anselmo, California, and more particularly described as follows:

PARCEL ONE

PARCEL TWO as shown upon that certain Parcel Map entitled, "Parcel Map Lands of California Land Title Portion Lands described in book 2887 of Official Records, at page 367, also being Portion of Lots 501 and 501-A unrecorded Map of Sleepy Hollow Acres, Vicinity of San Anselmo, Marin County, California, filed for record April 8, 1976 in Volume 12 of Parcel Maps, at page 43, Marin County Records.

EXCEPTING THEREFROM that portion deeded to Alain Pigois and Nina Pigois, husband and wife, as community property, by Deed recorded February 27, 1989, Serial No. 89 13373.

PARCEL TWO

AN EASEMENT for ingress, egress and public utility purposes described as follows:

BEGINNING at a point on the centerline of Fawn Drive, said point being the most southwesterly corner of Parcel 3, as shown upon that certain map entitled, "Parcel Map Lands of California Land Title Portion Lands described in Book 2887 of Official Records, at page 367, also being a portion of Lots 501 and 501-A, unrecorded Map of Sleepy Hollow Acres, Vicinity of San Anselmo, Marin County, California", filed for record April 9, 1976 in Volume 12 of Parcel Maps, at page 43, Marin County Records, said point also being the intersection of the calls "South 26° 20′ East 135 feet and North 63° 40′ East 20 feet" as contained in Parcel 2 of the Deed executed by California Land Title Company, a corporation to Michael C. McGuckin, et ux, recorded March 26, 1976 in Book 3010 of Official Records, at page 190, Marin County Records; thence from said point of beginning and along the exterior boundary of said Parcel 3, North 63° 40′ East 20 feet; thence North 75° 07′ 20" East 164.00 feet; thence leaving said exterior boundary of Parcel 3, North 12° 41′ East 85.00 feet; thence North 30° 45′ West 126.00 feet, thence North 13° 30′ East 79.21 feet to the northwesterly boundary of Parcel 1, as shown upon that certain map referred to hereinabove; thence along the exterior boundary of said Parcel 1, South 84° 00′ west 75.70 feet to the most Northerly corner of the parcel of land described in the Deed executed by Charles B. Roertson, et ux, to Paul Hopkins Talbot, Jr., et ux, recorded January 30, 1956 in book 1002 of Official Records, at page 623, Marin County Records; thence 111.77 feet, thence leaving said exterior boundary of Parcel 1, South 18° 45′ East 95.06 feet thence South 21° 48′ West 70.66 feet; thence South 75° 07′ 20" West 160.00 feet to the certline of Fawn Drive; thence along the

exterior boundary of said Parcel 3, also being the centerline of "Fawn Drive, South 26° 20' East 34.46 feet to the point of beginning.

28. On or about August 24, 1990, defendants Gerald Armstrong and Michael Walton transferred by grant deed the above-described property to defendant Michael Walton. On August 27, 1990, the grant deed was recorded in Marin County Official Records as number 90 50497 in the Office of the County Recorder of Marin County, California.

29. Plaintiff is further informed and believes and thereon alleges that the transfer was made with an actual intent to hinder, delay or defraud plaintiff in the collection of its damages.

30. Further, plaintiff is informed, and believes, and thereon alleges that at the time Armstrong made the transfers, he intended in the future to engage in the conduct in breach of his Agreement with plaintiff, described above, knowing that he would thereby incur the damages described herein and for which he would have rendered himself judgment-proof.

31. Defendant Armstrong received no money or other consideration in exchange for the aforementioned transfer. Plaintiff is informed and believes and thereon alleges that at the time of the transfer of the real property defendant Armstrong's interest in the real property was not less than $397,500.00. Thus, defendant Armstrong did not receive reasonably equivalent value in exchange for his interest in the real property.

32. Plaintiff is informed and believes and thereon alleges that defendant Walton received the above-described real property

with knowledge that defendant Armstrong intended to (1) hinder, delay or defraud the collection of plaintiff's aforementioned damages and (2) further breach his Agreement with plaintiff, thereby incurring substantial damages which it would be impossible for Armstrong to pay. Defendant Walton had previously advised Armstrong concerning the Agreement and was familiar with its terms and conditions; further, Armstrong had informed defendant Walton of his vendetta against plaintiff and all Churches of Scientology, and of his intentions to breach the Agreement. Moreover, Walton was well aware of the fraudulent nature of the transfer, for which he received no money or other consideration.

SECOND CAUSE OF ACTION

TO SET ASIDE FRAUDULENT TRANSFER OF ASSETS

(Against All Defendants)

33. Plaintiff realleges paragraphs 1-25, inclusive, and incorporates them herein by reference.

34. On or about August, 1990, defendant Gerald Armstrong was the owner and in possession and control of approximately $41,500 in cash, and shares of stock in The Gerald Armstrong Corporation which were valued by Armstrong at $1,000,000.

35. On or about August, 1990, Armstrong transferred the $41,500 in cash and the shares of stock in The Gerald Armstrong Corporation to defendants Walton and Does 1 - 100.

36. Plaintiff is further informed and believes and thereon alleges that the transfer was made with an actual intent to hinder, delay or defraud plaintiff in the collection of its damages.

37. Further, plaintiff is informed, and believes and thereon alleges that at the time Armstrong made the transfers, he intended in the future to engage in the conduct in breach of his Agreement with plaintiff, described above, knowing that he would thereby incur the damages described herein, and for which he would have rendered himself and his corporation judgment-proof.

38. Defendant Armstrong received no money or other consideration in exchange for the aforementioned transfer. Plaintiff is informed and believes and thereon alleges that at the time of the transfer of the cash and stock, defendant Armstrong's interest in the cash and stock was not less than $1,041,500. Thus, defendant Armstrong did not receive reasonably equivalent value in exchange for his interest in the transferred assets.

39. Plaintiff is informed and believes and thereon alleges that defendants Walton and Does 1 -100 received the above-described real property with knowledge that defendant Armstrong intended to (1) hinder, delay or defraud the collection of plaintiff's aforementioned damages; and (2) further breach his Agreement with plaintiff, thereby incurring substantial damages which it would be impossible for Armstrong or his corporation to pay. Defendant Walton had previously advised Armstrong concerning the Agreement and was familiar with its terms and conditions; further, Armstrong had informed defendant Walton and Does 1-100 of his vendetta against plaintiff and all Churches of Scientology, and of his intentions to breach the Agreement. Moreover, Walton and Does 1-100 were well aware of the fraudulent nature of the transfer, for which they received no money or other

consideration.

THIRD CAUSE OF ACTION

CONSPIRACY

(Against All Defendants)

40. Plaintiff realleges paragraphs 1-32 and 34-39, inclusive, and incorporates them herein by reference.

41. As alleged above, in August, 1990, defendants Armstrong, Walton, and Does 1 - 100 agreed, and knowingly and willfully conspired between themselves to hinder, delay and defraud plaintiff in the collection of its damages, and to render Armstrong unable to pay any and all damages to plaintiff which Armstrong had incurred and intended to and did incur in violation of the Agreement.

42. Pursuant to this conspiracy, the above-named defendants agreed that Walton and Does 1 - 100 would take ownership and/or possession of all of defendant Armstrong's assets of any value, including the above-described real property, cash and stock and everything remaining from the proceeds of the settlement which Armstrong had accepted from plaintiff pursuant to the Agreement. Further, the defendants conspired and agreed to hide any and all future assets acquired by Armstrong in the sham corporation, The Gerald Armstrong Corporation, in order to protect Armstrong's assets from collection so long as he was breaching the Agreement, and plaintiff was attempting to collect damages for those breaches. Plaintiff is unaware of the present value of those assets which have been so hidden, but is informed and believes and thereon alleges that their value exceeds $1,800,000, the minimum value of plaintiff's claim.

43. Defendants Armstrong, Walton, The Gerald Armstrong Corporation and Does 1 - 100 did the acts and things herein alleged pursuant to, and in furtherance of, the conspiracy and agreement alleged above.

44. As a proximate result of the wrongful acts herein alleged, plaintiff has been generally damaged in the sum of $1,800,000.

45. At all times mentioned herein, defendants Walton, Armstrong, The Gerald Armstrong Corporation and Does 1-100 knew of defendant Armstrong's actions and intended actions against plaintiff, knew of Armstrong's resultant obligation to plaintiff, and knew that plaintiff's claims could only be satisfied out of the property, sums and stock transferred by Armstrong. Notwithstanding this knowledge, defendants Walton, Armstrong, The Gerald Armstrong Corporation and Does 1-100 intentionally, willfully, fraudulently and maliciously did the things herein alleged to defraud and oppress plaintiff. Plaintiff is therefore entitled to exemplary or punitive damages in the sum of $3,000,000 against all defendants, individually and severally.

WHEREFORE, plaintiff prays for judgment as follows:

ON THE FIRST CAUSE OF ACTION

1. That the transfer of the real property from defendant Armstrong to defendant Walton be set aside and declared void as to the plaintiff herein to the extent necessary to satisfy plaintiff's claim in the sum of $1,800,000 plus interest thereon at the maximum rate permitted by law from 1990;

2. That defendant Walton be restrained from disposing of

the property transferred;

3. That a temporary restraining order be granted plaintiff enjoining and restraining defendant Walton, and his representatives, agents, and attorneys from selling, transferring, conveying, or otherwise disposing of any of the property transferred;

4. That the judgment herein be declared a lien on the property transferred;

5. That an order be made declaring that defendant Walton holds all of the real property described above in trust for plaintiff.

6. That defendant Walton be required to account to plaintiff for all profits and proceeds earned from or taken in exchange for the property described above.

ON THE SECOND CAUSE OF ACTION

1. That the transfer of assets from defendant Armstrong to defendants Walton and Does 1 - 100 be set aside and declared void as to the plaintiff herein to the extent necessary to satisfy plaintiff's claim in the sum of $1,800,000 plus interest thereon at the maximum rate permitted by law from 1990;

2. That defendants Walton, The Gerald Armstrong Corporation and Does 1 - 100 be restrained from disposing of the property transferred;

3. That a temporary restraining order be granted plaintiff enjoining and restraining defendants Walton, The Gerald Armstrong Corporation and Does 1 - 100, and their representatives, agents, and attorneys from selling, transferring, conveying, or otherwise disposing of any of the property transferred;

4. That the judgment herein be declared a lien on the property transferred;

5. That an order be made declaring that defendants Walton, The Gerald Armstrong Corporation and Does 1-100 hold all of the assets described above in trust for plaintiff.

6. That defendants Walton and Does 1 - 100 be required to account to plaintiff for all profits and proceeds earned from or taken in exchange for the property described above;

ON THE THIRD CAUSE OF ACTION

1. For general damages in the amount of $1,800,000;

2. For exemplary or punitive damages in the sum of $3,000,000;

ON ALL CAUSES OF ACTION AGAINST ALL DEFENDANTS

1. For attorneys fees and costs;

2. For such other and further relief as the court may deem proper.

DATED: July 21, 1993

WILSON, RYAN & CAMPILONGO

BY: _____
Andrew H. Wilson

Laurie J. Bartilson
BOWLES & MOXON

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

VERIFICATION

I, ANDREW H. WILSON, declare as follows:

I am one of the attorneys for the Plaintiff Church of Scientology International in the above-entitled matter. I have read the foregoing Verified Complaint to Set Aside Fraudulent Transsfers and for Damages; Conspiracy and know the contents thereof, which are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters, I believe it to be true.

I declare under the penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed on July 21, 1993 at San Francisco, California.

ANDREW H. WILSON

York
d 1940-4 1/2 yrs. of
o. High 1945

THE

NEW TESTAMENT

RED LETTER EDITION

OF

OUR LORD AND SAVIOUR

JESUS CHRIST

(*AUTHORIZED VERSION*)

WITH ALL THE WORDS RECORDED THEREIN AS
HAVING BEEN SPOKEN BY OUR LORD
PRINTED IN RED

MADE IN U. S. A.

his fault between thee and him alone: if he shall hear thee, thou hast gained thy brother.

16 But if he will not hear *thee*, *then* take with thee one or two more, that in the mouth of two or three witnesses every word may be established.

17 And if he shall neglect to hear them, tell *it* unto the church: but if he neglect to hear the church, let him be unto thee as an heathen man and a publican.

18 Verily I say unto you, Whatsoever ye shall bind on earth shall be bound in heaven: and whatsoever ye shall loose on earth shall be loosed in heaven.

19 Again I say unto you, That if two of you shall agree on earth as touching any thing that they shall ask, it shall be done for them of my Father which is in heaven.

20 For where two or three are gathered together in my name, there am I in the midst of them.

21 ¶ Then came Peter to him, and said, Lord, how oft shall my brother sin against me, and I forgive him? till seven times?

22 Jesus saith unto him, I say not unto thee, Until seven times: but Until seventy times seven.

23 ¶ Therefore is the kingdom of heaven likened unto a certain king, which would take account of his servants.

24 And when he had begun to reckon one was brought unto him, which owed him ten thousand talents.

25 But forasmuch as he had not to pay, his lord commanded him to be sold, and his wife, and children, and all that he had, and payment to be made.

26 The servant therefore fell down, and worshipped him, saying, Lord, have patience with me, and I will pay thee all.

27 Then the lord of that servant was moved with compassion, and loosed him, and forgave him the debt.

28 But the same servant went out, and found one of his fellowservants, which owed him an hundred pence: and he laid hands on him, and took *him* by the throat, saying, Pay me that thou owest.

29 And his fellowservant fell down at his feet, and besought him, saying, Have patience with me, and I will pay thee all.

30 And he would not: but went and cast him into prison, till he should pay the debt.

31 So when his fellowservants saw what was done, they were very sorry, and came and told unto their lord all that was done.

32 Then his lord, after that he had called him, said unto him, O thou wicked servant, I forgave thee all that debt, because thou desiredst me:

33 Shouldest not thou also have had compassion on thy fellowservant, even as I had pity on thee?

34 And his lord was wroth, and delivered him to the tormenters, till he should pay all that was due unto him.

35 So likewise shall my heavenly Father do also unto you, if ye from your hearts forgive not every one his brother their trespasses.

CHAPTER 19.

2 Healing of the sick. 3 On marriage and divorce. 13 Children are brought to Jesus. 16 Keeping the commandments. 27 Promise of reward.

AND it came to pass, *that* when Jesus had finished these sayings, he departed from Galilee, and came into the coasts of Judea beyond Jordan;

2 And great multitudes followed him; and he healed them there.

3 ¶ The Pharisees also came unto him, tempting him, and saying unto him, Is it lawful for a man to put away his wife for every cause?

4 And he answered and said unto them, Have ye not read, that he which made *them* at the beginning made them male and female,

5 And said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh?

6 Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.

7 They say unto him, Why did Moses then command to give a writing of divorcement, and to put her away?

8 He saith unto them, Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so.

9 And I say unto you, Whosoever shall put away his wife, except *it be* for fornication, and shall marry another, committeth adultery: and whoso marrieth her which is put away doth commit adultery.

10 ¶ His disciples say unto him, If the case of the man be so with *his* wife, it is not good to marry.

11 But he said unto them, All *men* cannot receive this saying, save *they* to whom it is given.

12 For there are some eunuchs, which were so born from *their* mother's womb: and there are some eunuchs which were made eunuchs of men: and there be eunuchs, which have made themselves eunuchs for the kingdom of heaven's sake. He that is able to receive *it*, let him receive *it*.

13 ¶ Then were there brought unto him little children, that he should put *his* hands on them, and pray: and the disciples

rebuked them.

14 But Jesus said, Suffer little children, and forbid them not, to come unto me: for of such is the kingdom of heaven.

15 And he laid *his* hands on them, and departed thence.

16 ¶ And, behold, one came and said unto him, Good Master, what good thing shall I do, that I may have eternal life?

17 And he said unto him, Why callest thou me good? *there is* none good but one, *that is*, God: but if thou wilt enter into life, keep the commandments.

18 He saith unto him, Which? Jesus said, Thou shalt do no murder, Thou shalt not commit adultery, Thou shalt not steal, Thou shalt not bear false witness,

19 Honour thy father and *thy* mother: and, Thou shalt love thy neighbour as thyself.

20 The young man saith unto him, All these things have I kept from my youth up: what lack I yet?

21 Jesus said unto him, If thou wilt be perfect, go *and* sell that thou hast, and give to the poor, and thou shalt have treasure in heaven: and come *and* follow me.

22 But when the young man heard that saying, he went away sorrowful: for he had great possessions.

23 ¶ Then said Jesus unto his disciples, Verily I say unto you, That a rich man shall hardly enter into the kingdom of heaven.

24 And again I say unto you, It is easier for a camel to go through the eye of a needle, than for a rich man to enter into the kingdom of God.

25 When his disciples heard *it*, they were exceedingly amazed, saying, Who then can be saved?

26 But Jesus beheld *them*, and said, unto them, With men this is impossible; but with God all things are possible.

27 ¶ Then answered Peter and said unto him, Behold, we have forsaken all, and followed thee; what shall we have therefore?

28 And Jesus said unto them, Verily I say unto you, That ye which have followed me, in the regeneration when the Son of man shall sit in the throne of his glory, ye also shall sit upon twelve thrones, judging the twelve tribes of Israel.

29 And every one that hath forsaken houses, or brethren, or sisters, or father, or mother, or wife, or children, or lands, for my name's sake, shall receive an hundredfold, and shall inherit everlasting life.

30 But many *that are* first shall be last; and the last *shall be* first.

CHAP

1 Labourers in t passion foretold. dee's wife. 30 their sight.

FOR the kingd unto a man t which went out to hire labourers

2 And when he labourers for a d them into his vin

3 And he went hour, and saw o the marketplace,

4 And said unto the vineyard, an I will give you. A

5 Again he wen and ninth hour,

6 And about the out, and found and saith unto th all the day idle

7 They say unto hath hired us. Go ye also into t soever is right, t

8 So when eve of the vineyard Call the labourer hire, beginning first.

9 And when the about the eleven every man a pen

10 But when th posed that they more; and they man a penny.

11 And when they murmured the house,

12 Saying, Th *but* one hour, an equal unto us, burden and heat

13 But he answ said, Friend, I d not thou agree

14 Take *that* t I will give unto thee.

15 Is it not la I will with mine because I am go

16 So the last first last: for m chosen.

17 ¶ And Jesu took the twelv way, and said

18 Behold, w and the Son o unto the chie

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Attorney for Defendant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. 157 680 VERIFIED ANSWER OF GERALD ARMSTRONG

Gerald Armstrong, hereinafter "Armstrong," hereby submits the following answer to the complaint of plaintiff organization CHURCH OF SCIENTOLOGY INTERNATIONAL, hereinafter "CSI."

1. Armstrong admits that he entered into a settlement agreement, hereinafter "agreement" but denies that the Scientology organization, including plaintiff organization herein, hereinafter referred to as "CSI," entered into the same settlement "agreement." CSI had no intention that the "agreement" by which it seeks to bind Armstrong would settle anything or be effective

in binding CSI to any future behavior. What CSI sought to enter into was a conspiracy by which it could continue to attack Armstrong, obstruct justice, and defraud the world's courts and its present and future victims. Armstrong denies that he entered into agreement with that conspiracy. Armstrong denies that the "agreement" provided for a mutual release and waiver of all claims arising out of a cross complaint he had filed in the case of CSC V. Armstrong, LA Superior Court No. C 420153. Armstrong considered that he was releasing CSI from all his claims and that CSI was releasing him from all its claims; but CSI considered rather that the settlement agreement it lead Armstrong to believe would apply to it did not in fact apply to it, and it considered that it was free to continue to press its claims against Armstrong and to continue to litigate his claims and its claims in the world's courts without him being able to respond. Armstrong denies that he is a former Church member. He is a present Church member. But he is not an org member. Armstrong denies that the description of CSI as a church is true. It is, as it is now structured and governed, a totalitarian cult of unreason, irreligious in philosophy, greedy in humor, antisocial in conduct, and political in motivation. Armstrong denies CSI's description of him. It is CSI which sought by litigation and covert means to disrupt Armstrong's activities and life, and which displayed through the years an intense and abiding hatred for Armstrong, and an eagerness to annoy and harass him by spreading enmity and hatred about him among its employees, customers, victims, in the media, the courts and the world. It is CSI's own policies, personnel and actions which have caused all of its disruptions of

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its activities and life that it seeks to hang on Armstrong. Armstrong denies that CSI sought to end his covert activities, because there were no such covert activities, or to end the litigation. Armstrong denies that the agreement contained carefully negotiated and agreed-upon provisions. Armstrong was not included in one word of the negotiations, which were engineered by CSI through its fair game operations toward and compromise of Armstrong's attorney, Michael Flynn. Armstrong never agreed to the conditions, but did agree with the representations of his attorney that the conditions were unenforceable. CSI intended and used the settlement to continue its litigation war with Armstrong, and to extend its use of litigation to attack its perceived enemies. CSI is the greatest fomenter of litigation this country has ever known. Its abuse of the system and its use of litigation to intimidate and destroy peoples' lives are legendary. Armstrong denies that CSI bargained for the settlement provisions to put an end to enmity and strife generated by him, because he generated no such enmity and strife. CSI's purpose with the settlement agreement was to allow it to continue and accelerate the global enmity and strife it generated so as to increase its ideological power and financial profit through the dissemination of unchecked disinformation.

2. Armstrong denies each and every averment of this paragraph. There is nothing he could have done in February 1990 which could possibly have violated any provisions of the agreement because there was no agreement. It was CSI which violated the agreement's provisions in letter and spirit, and has done so since its signing. Armstrong has never feared that CSI would seek to

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collect the liquidated damages owed by his breaches. CSI is responsible for each breach which it blames on Armstrong, the underlying settlement agreement has been clearly proven to be unenforceable, and he is confident that he will prevail not only in this lawsuit, which is an out-and-out sham, but in the two pending lawsuits in Los Angeles Superior Court. Armstrong denies that he has ever fraudulently conveyed anything to anyone, and denies that he ever received no consideration in return for any transaction in which he has ever been involved. Armstrong never deliberately set out to repeatedly breach the agreement. Armstrong has incurred no debt to CSI.

3. Armstrong denies each and every averment of this paragraph. There are no breaches because there is no agreement to breach. There is no indebtedness. The two Los Angeles actions are clear evidence of CSI's agreement violations, abuse of process and malicious prosecution of Armstrong, and obstruction of justice toward its victims, "enemy" targets and the courts. Armstrong denies the designations given the LA actions by CSI. Church of Scientology International v. Armstrong, LASC No. BC 052395 is known by the designation Armstrong II. Church of Scientology International v. Armstrong, LASC No. BC 084642 is known by the designation Armstrong III. Church of Scientology of California v. Armstrong, LASC No. C 420153 is known by the designation Armstrong I. This action is Armstrong IV.

4. Armstrong denies that CSI is a church. Armstrong denies that Scientology is a religion.

5. Armstrong admits that he is a resident of Marin County.

6. Armstrong admits that Michael Walton is a resident of

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Marin County.

7. Armstrong lacks knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and is therefore unable to admit or deny the same. Armstrong is the president and majority stockholder in The Gerald Armstrong Corporation, also known as TeeGeeAck, or TGAC, but has no information regarding Gerald Armstrong Corporation or "GAC."

8. Armstrong denies that there are any DOES 1 through 25 because there are no fraudulent conveyances on which this complaint has been based.

9. Armstrong denies each and every averment of this paragraph.

10. Armstrong denies each and every averment of this paragraph.

11. Armstrong denies each and every averment of this paragraph.

12. Armstrong denies each and every averment of this paragraph.

13. Armstrong denies each and every averment of this paragraph.

14. Armstrong denies each and every averment of this paragraph.

15. Armstrong denies each and every averment of this paragraph.

16. Armstrong admits the substance of this paragraph, except that an essential part of settlement agreement Paragraph 7 (D) has been omitted from the description of its substance in this paragraph; to wit, that it is further understood by all parties to

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the agreement that the provisions of this paragraph are unenforceable.

17. Armstrong admits the representation in this paragraph, but only with the understanding that he understood that CSIanization understood that he understood that all parties understood that the agreement's provisions which appear to prohibit Armstrong's exercise of his Constitutional rights are unenforceable.

18. Armstrong admits the substance of this paragraph.

19. Armstrong lacks knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and is therefore unable to admit or deny the same.

20. Armstrong admits that he was paid an amount in settlement of his claims against CSI, but denies that it was at least $520,000 after expenses.

21. Armstrong denies each and every averment of this paragraph.

22. Armstrong denies each and every averment of this paragraph.

23. Armstrong denies each and every averment of this paragraph.

24. Armstrong denies that CSI has ever made a demand, denies that he has refused to pay any damages, and denies that CSI has suffered any damages.

25. Armstrong denies that there are any breaches described herein.

26. Armstrong admits that CSI realleges its paragraphs 1 - 25, and he readmits and redenies the averments of these paragraphs

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as set forth in his answers 1 - 25 above.

27. Inasmuch as his name was on title on or about said date as an owner of said property, Armstrong admits the averments of this paragraph.

28. Armstrong admits that he did convey the subject property to Michael Walton but lacks knowledge or information sufficient to form a belief as to the truth of the other averments in this paragraph and is therefore unable to admit or deny the same.

29. Armstrong denies each and every averment of this paragraph.

30. Armstrong denies each and every averment of this paragraph.

31. Armstrong denies each and every averment of this paragraph.

32. Armstrong denies each and every averment of this paragraph; except he admits that Mr. Walton had advised him concerning the agreement, was familiar with the terms and conditions thereof, and was aware of the unrebutted and undenied evidence that attorney Michael Flynn was the victim of CSI's policy of fair game and that Mr. Flynn had advised both Armstrong and CSI that the agreement is unenforceable.

33. Armstrong admits that CSI reallege its paragraphs 1 - 25, and he readmits and redenies the averments of these paragraphs as set forth in his answers 1 - 25 above.

34. Armstrong denies each and every averment of this paragraph.

35. Armstrong denies each and every averment of this paragraph.

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36. Armstrong denies each and every averment of this paragraph.

37. Armstrong denies each and every averment of this paragraph.

38. Armstrong denies each and every averment of this paragraph.

39. Armstrong denies each and every averment of this paragraph; except as admitted in answer 32 above.

40. Armstrong admits that CSI reallege its paragraphs 1 - 32 and 34 - 39 and he readmits and redenies the averments of these paragraphs as set forth in his answers 1 - 32 and 34 - 39 above.

41. Armstrong denies each and every averment of this paragraph.

42. Armstrong denies each and every averment of this paragraph; except that he admits that CSI is unaware of the value of any assets specified, described or alluded to in its complaint.

43. Armstrong denies each and every averment of this paragraph.

44. Armstrong denies each and every averment of this paragraph.

45. Armstrong denies each and every averment of this paragraph.

AFFIRMATIVE DEFENSES

Allegation Common To All Affirmative Defenses

46. Plaintiff is a single component of the Scientology organization, that, along with all of the Scientology-related beneficiaries of the 1986 settlement involving defendant Gerald Armstrong are subject to a unity of control exercised by David

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Miscavige. Plaintiff and all other Scientology-related organizations, entities and individuals were created by David Miscavige and his attorneys as an attempt to avoid payment of civil judgments and to confuse courts and those seeking redress for the civil and criminal misconduct of Miscavige and all other Scientology-related organizations, entities and individuals. Due to the unity of personnel, commingling of assets, and commonality of business objectives, any effort by plaintiff to represent itself as being independent and separate should be disregarded.

FIRST AFFIRMATIVE DEFENSE

(First Amendment - Religion)

47. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds that the complaint and the "agreement" on which it is based seek to attack, limit and deny Armstrong's right to freedom of religion guaranteed by the state and federal constitutions.

SECOND AFFIRMATIVE DEFENSE

(First Amendment - Speech)

48. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds that the complaint and the "agreement" on which it is based seek to attack, limit and deny Armstrong right to freedom of speech guaranteed by the state and federal constitutions.

THIRD AFFIRMATIVE DEFENSE

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(First Amendment - Association)

49. Further answering said complaint, and as a separate and affirmative defense thereto, this answering defendant alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds that the complaint and the "agreement" on which it is based seek to attack, limit and deny Armstrong's right to freedom of association guaranteed by the state and federal constitutions.

FOURTH AFFIRMATIVE DEFENSE

(First Amendment - Press)

50. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds that the complaint and the "agreement" on which it is based seek to attack, limit and deny Armstrong's right to freedom of press guaranteed by the state and federal constitutions.

FIFTH AFFIRMATIVE DEFENSE

(Privacy)

51. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds that the complaint and the "agreement" on which it is based seek to attack, limit and deny Armstrong's right of privacy guaranteed by the state and federal constitutions.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

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52. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong repeats, realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 45 herein and alleges as follows:

Plaintiff is barred from bringing this action against Armstrong and/or obtaining the relief requested in this complaint under the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

(Illegality)

53. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong repeats, realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 45 herein and alleges as follows:

Plaintiff is barred from bringing this action against Armstrong as a result of its acts of illegality in connection with matters which give rise to this case, and upon the ground that the agreement upon which this lawsuit is based in illegal, void and unenforceable.

EIGHTH AFFIRMATIVE DEFENSE

(Estoppel)

54. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong repeats, realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 45 herein and alleges as follows:

Plaintiff is equitably estopped from asserting each and all

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of the purported causes of action in the complaint by reason of its own acts, omissions and conduct, or that of its agents.

NINTH AFFIRMATIVE DEFENSE

(Waiver)

55. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong repeats, realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 45 herein and alleges as follows:

Plaintiff is barred from bringing this action against Armstrong by reason of its own acts, omissions and conduct, or that of its agents.

TENTH AFFIRMATIVE DEFENSE

(Fraud And Deceit)

56. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong repeats, realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 45 herein and alleges as follows:

Plaintiff is barred from bringing this action against Armstrong because of its fraud and deceit in its representations by which it tricked Armstrong into signing the subject "agreement."

ELEVENTH AFFIRMATIVE DEFENSE

(Duress and Undue Influence)

57. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong repeats, realleges and incorporates by reference herein each and every allegation

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contained in paragraphs 1 through 45 herein and alleges as follows:

Plaintiff is barred from bringing this action against Armstrong because it implemented fair game stratagems on Armstrong, his attorney Michael Flynn, and upon other anti-Scientology litigants and would continue such conduct against all such persons unless all such anti-Scientology litigants, including Mr. Flynn, signed settlement agreement substantially similar to that signed by Armstrong.

TWELFTH AFFIRMATIVE DEFENSE

(Impossibility)

58. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds of impossibility as it relates to the subject settlement contract.

THIRTEENTH AFFIRMATIVE DEFENSE

(Frustration of Contractual Purpose)

59. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against this defendant on the grounds of frustrating Armstrong's ability to perform the terms of the settlement agreement.

FOURTEENTH AFFIRMATIVE DEFENSE

(Unfair and Unreasonable Contract)

60. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against

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Armstrong on the grounds that the settlement contract is unreasonable and unfair.

FIFTEENTH AFFIRMATIVE DEFENSE

(Lack of Mutuality)

61. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds that the settlement contract, as interpreted by plaintiff, lacks in reciprocity and mutuality.

SIXTEENTH AFFIRMATIVE DEFENSE

(Ambiguity)

62. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds that the settlement contract is ambiguous and incapable of enforcement.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Lack of Adequate Consideration)

63. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds that the settlement contract is not supported by adequate consideratino.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Unconscionability)

64. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against

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Armstrong on the grounds that the settlement contract and plaintiff's manufacturing of the allegations in this complaint are unconscionable.

NINETEENTH AFFIRMATIVE DEFENSE

(Adhesion)

65. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds that the settlement contract is a contract of adhesion.

TWENTIETH AFFIRMATIVE DEFENSE

(Hardship)

66. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds that the settlement contract works an unfair hardship on Armstrong.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Offset)

67. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Any damages that plaintiff has suffered in consequence of the alleged conduct of Armstrong is exceeded by the damages suffered by Armstrong in consequence of the misconduct of plaintiff, and its agents' acts of fair game, and therefore plaintiff should take nothing.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Liquidated Damages Act As Penalty)

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68. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds that the settlement agreement's provision of liquidated damages is not an approximation of damage, but is intended to act and does act as a penalty.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Implied Covenant of Good Faith and Fair Dealing)

69. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from bringing this action against Armstrong on the grounds that the conduct of plaintiff and its agents violates the implied covenant of good faith and fair dealing.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Justification - Defense of Another, Interests of Third Persons, and the Public)

70. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong repeats, realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 45 herein and alleges as follows:

At all times relevant, the acts of Armstrong were privileged and justified because they were done in defense of others, the interests of third parties, the interests of justice, and the interests of the public.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

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71. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff, and/or its agents, and/or its counsel failed to take proper and reasonable steps to avoid or mitigate the damages alleged in the complaint, and to the extent of such failure to mitigate or to avoid damages allegedly incurred by plaintiff, if any, should be reduced accordingly.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Action Barred By Equity and Civil Code Provisions)

72. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong repeats, realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 45 herein and alleges as follows:

Plaintiff is barred from judicial relief by the general principles of equity and the specific provisions of Part IV of the Civil Code, including but not limited to sections 3512, 3517, 3519, 3524 and 3533 (without any admission of wrongdoing by Armstrong).

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Void As Against Public Policy)

73. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong repeats, realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 45 herein and alleges as follows:

Plaintiff is barred from judicial relief because the settlement contract is against public policy.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(The Settlement Agreement Cannot Be Specifically Enforced)

74. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from judicial relief because the settlement agreement cannot be specifically enforced.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(The Settlement Agreement Cannot Be Specifically Performed)

75. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from judicial relief because the settlement agreement cannot be specifically performed.

THIRTIETH AFFIRMATIVE DEFENSE

(Due Process)

76. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from judicial relief because the settlement agreement deprives Armstrong, defendant Gerald Armstrong, other third parties and the public of due process of law as protected by the state constitution and by the Fifth and Fourteenth Amendments to the federal constitution.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Equal Protection)

77. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from judicial relief because the settlement agreement deprives Armstrong, other third parties and the public of equal protection of law as guaranteed by the state

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constitution and the federal constitution.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Right To Counsel)

78. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from judicial relief because the settlement agreement deprives Armstrong other third parties and members of the public to their right to counsel as protected by the state constitution and by the Sixth Amendment to the federal constitution.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Public Domain)

79. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from judicial relief because the information that Armstrong is accused of disclosing is in the public domain.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Mistake of Law)

80. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong repeats, realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 45 herein and alleges as follows:

Plaintiff is barred from bringing this action against Armstrong because Armstrong's former attorney Michael Flynn advised him that the provisions of the settlement contract which plaintiff alleges Armstrong has violated, and which underlie this

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complaint, are unenforceable. Armstrong relied on such representations, but for which he would not have signed said settlement contract.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Mistake of Law)

81. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong repeats, realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 45 herein and alleges as follows:

Plaintiff is barred from bringing this action against Armstrong because Armstrong's former attorney Michael Flynn advised him that the provisions of the settlement agreement which plaintiff alleges Armstrong has violated, and which underlie this complaint, are unenforceable. Armstrong relied on such representations, but for which he would not have signed said settlement agreement.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Conflict of Interest)

82. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong repeats, realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 45 herein and alleges as follows:

Plaintiff is barred from bringing this action against Armstrong because defendant Armstrong's former attorney Michael Flynn, in conjunction with settling Armstrong's case against Scientology-related entities, also settled 30 other cases,

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including cases of his own against Scientology-related entities without procuring outside counsel for Armstrong.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Privilege)

83. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Plaintiff is barred from judicial relief because the acts that Armstrong is accused of having committed are privileged.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(No Intent To Defraud)

84. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Armstrong never intended to hinder, delay or defraud any creditor, including CSI.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(No Undercapitalized Transaction)

85. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Armstrong never engaged in a business or transaction after the transfer at issue herein with assets that were unreasonably small.

FORTIETH AFFIRMATIVE DEFENSE

(No Intent To Incur Debts Beyond Ability To Pay)

86. Further answering said complaint, and as a separate and affirmative defense thereto, Armstrong alleges as follows:

Armstrong never intended to incur, or reasonably should have believed that he would incur debts beyond his ability to pay as

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whatever injuries and/or damages plaintiff sustained and requests that any judgment rendered herein in favor of plaintiff and against this answering defendant be in an amount proportionate to this answering defendant's degree of fault.

DEMAND FOR A JURY TRIAL

This defendant hereby demands this case by tried by a jury.

WHEREFORE, Defendant Gerald Armstrong prays for relief as follows:

1. That plaintiff take nothing by its complaint;

2. That Armstrong recover his costs of suit herein;

3. That Armstrong recover his attorney's fees and costs of defending the suit herein;

4. That the Court award such further relief as it may deem proper.

DATED: November 29, 1993 HUB LAW OFFICES

By: _____
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

HUB LAW OFFICES
Ford Greene, Esquire
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960
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VERIFICATION

I, the undersigned, am the defendant in the above entitled action. I know the contents of the foregoing Answer and I certify that the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct according to the laws of the State of Caifornia and that this declaration was executed on this 30th day of November, 1993, at San Anselmo, California.

By: _____

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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

Laurie J. Bartilson, Esq.
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

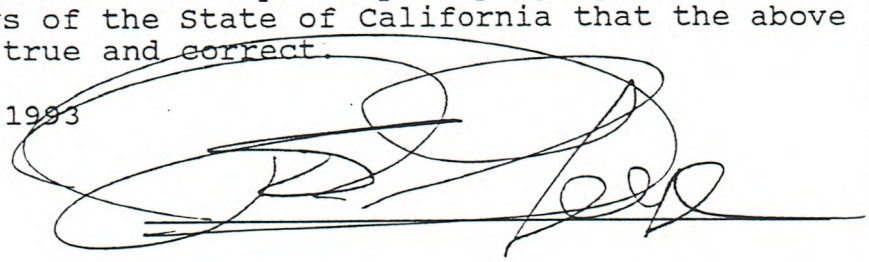
MICHAEL WALTON
707 Fawn Drive
San Anselmo, CA 94960

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[ ] (Personal) I caused said papers to be personally service on the office of opposing counsel.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 30, 1993



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[Civ. No. 45562. Second Dist., Div. Two. May 18, 1976.]

L. GENE ALLARD, Plaintiff, Cross-defendant and Respondent, v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, Defendant, Cross-complainant and Appellant.

SUMMARY

Plaintiff sued a church for malicious prosecution after charges of grand theft brought against him by the church had been dismissed. Plaintiff had formerly been a member of the church, and testified at the trial that he had been warned by church officials that if he left the church without permission, he would be "fair game." Plaintiff further testified that under a policy of the church, persons designated as being "fair game" could be tricked, sued, lied to or destroyed. A jury verdict and judgment were entered for plaintiff for $50,000 in compensatory damages and $250,000 in punitive damages. A judgment also was entered for plaintiff against defendant on a cross-complaint for conversion. (Superior Court of Los Angeles County, No. 988151, Parks Stillwell, Judge.)

The Court of Appeal reduced the award of punitive damages to the sum of $50,000, and otherwise affirmed the judgment. The court held that the introduction of the policy statements of the church as to "fair game," while extremely damaging to defendant, were entirely relevant on the main issue of credibility, and that such relevance far outweighed any claimed prejudice. The court also held that damages in malicious prosecution actions are similar to those in defamation, and that damage to plaintiff's reputation could thus be presumed from the charge that he committed the crime of theft. In regard to defendant's claim that the trial court refused to ask or permit voir dire questions of prospective jurors pertaining to their religious prejudices or attitudes, the court held that the trial court's thorough questioning of each juror served the purpose of voir dire, which is to select a fair and impartial jury, not to educate the jurors or to determine the exercise of peremptory challenges. The court

also held that the disparity between the compensatory damages and the punitive damages suggested that animosity against defendant was the deciding factor in the award of punitive damages. (Opinion by Beach, J., with Roth, P. J., and Fleming, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) **New Trial § 15—Grounds—Misconduct of Counsel.**—A trial judge is in a better position than an appellate court to determine whether a verdict resulted wholly, or in part, from the asserted misconduct of counsel, and its conclusion in the matter will not be disturbed unless, under all the circumstances, it is plainly wrong.

(2) **Malicious Prosecution § 10—Actions—Evidence and Proof.**—In an action against a church for malicious prosecution, brought by a former member who had been charged with grand theft, in which the principal issue was one of credibility, the admission into evidence of a policy statement of the church that its members were allowed to trick, sue, lie to or destroy "enemies," was not error, where such policy statements went directly to the issue of credibility and were thus entirely relevant. Furthermore, the introduction of such evidence did not constitute a violation of defendant's constitutional rights of free exercise of religion.

(3) **Malicious Prosecution § 10—Actions—Evidence and Proof.**—In an action for malicious prosecution by a former church member against a church that brought charges against plaintiff for allegedly taking money from a church safe, the trial court properly denied defendant's motion for judgment notwithstanding the verdict, made on the ground that even if plaintiff's superior in the church had in fact taken the money himself or lied about plaintiff's alleged theft, knowledge thereof should not be imputed to defendant, where the jury could infer that the superior was acting within the scope of his employment, based on evidence that it was a policy of the church that any of its enemies could be tricked, sued, lied to or destroyed, and where plaintiff had withdrawn from the church without permission, after being warned of the possible adverse consequences.

(4) **Jury § 24—Selection and Formation—Qualifications.**—The trial court performed proper voir dire of prospective jurors in a malicious prosecution action against a church, where each juror was asked if he or she had any belief or feeling toward any of the parties that might be regarded as a bias or prejudice for or against any of them; where each juror was also asked if he or she had ever heard of the church, and if the juror answered affirmatively, was further questioned as to the extent of knowledge regarding the church and whether such knowledge would hinder the rendering of an impartial decision.

(5) **Jury § 24—Selection and Formation of Jury—Qualifications—Voir Dire.**—The purpose of voir dire is to select a fair and impartial jury, not to educate the jurors or to determine the exercise of peremptory challenges.

(6) **Malicious Prosecution § 10—Actions—Evidence and Proof.**—In an action for malicious prosecution arising out of a charge that plaintiff had stolen foreign currency from defendant, it was not prejudicial error to instruct the jury to disregard evidence that plaintiff had stolen certain travelers checks from defendant, where the jury had found for the plaintiff on a cross-complaint by defendant relating to conversion of the travelers checks, thus making it evident that the jury did not believe that plaintiff had stolen the checks.

(7) **Malicious Prosecution § 7—Essentials to Maintenance of Action—Favorable Termination.**—In a malicious prosecution action, defendant suffered no prejudice from a trial court's denial of discovery of the factual basis underlying the dismissal of the criminal charges against plaintiff that were the basis of the action where, whether or not such denial was justified, it was stipulated at trial that such criminal proceedings had been terminated in plaintiff's favor by dismissal on recommendation of the district attorney, and where earlier knowledge of the information, produced during trial, as to reasons for the dismissal would not have helped defendant.

(8a, 8b) **Malicious Prosecution § 15—Damages—Reputation—Evidence.**—In an action for malicious prosecution, no error, prejudicial or otherwise, resulted from the trial court's allowing plaintiff to claim damage to reputation without allowing defendant to introduce evidence of plaintiff's prior bad reputation, where there was no offer of proof regarding plaintiff's bad reputation.

(9) **Malicious Prosecution § 15—Damages—Reputation.**—Damages in malicious prosecution actions are similar to those in defamation, and, therefore, damage to one's reputation can be presumed from a charge that a person committed the crime of theft.

(10) **Malicious Prosecution § 15—Damages—Amount.**—On appeal from a judgment in favor of plaintiff in a malicious prosecution action, it could not be said that the jury's finding of $50,000 in compensatory damages was unjustified, and the amount alone did not demonstrate that it was the result of passion and prejudice, in light of the presumed damage to plaintiff's reputation from an unfounded charge of grand theft, along with imprisonment on that charge for 21 days, and in light of the mental and emotional anguish that must have followed.

[See **Cal.Jur.3d,** Assault and Other Wilful Torts, § 342; **Am. Jur.2d,** Malicious Prosecution, § 106.]

(11) **Malicious Prosecution § 15—Damages—Punitive Damages.**—In an action against an incorporated church for malicious prosecution, the jury could properly find that the corporate defendant either authorized or ratified the malicious prosecution so as to entitle plaintiff to punitive damages, where there was evidence that a policy initiated by the founder and chief official of the church was an official authorization to treat "enemies" in a manner in which plaintiff was treated by defendant, and where all the officials of the church involved were important managerial employees of the corporation.

(12) **Malicious Prosecution § 15—Damages—Amount of Punitive Damages.**—The disparity between the compensatory damages of $50,000 awarded to a plaintiff in a malicious prosecution action against a church, and punitive damages of $250,000, suggested that animosity was the deciding factor in the award of punitive damages, and called for a reduction of such damages to $50,000.

(13) **Damages § 27—Exemplary or Punitive Damages—Review.**—A reviewing court should examine punitive damages and, where necessary, modify the amount in order to do justice.

COUNSEL

Morgan, Wenzel & McNicholas, John P. McNicholas, Gerald E. Agnew, Jr., and Charles B. O'Reilly for Plaintiff, Cross-defendant and Respondent.

Levine & Krom, Meldon E. Levine, Murchison, Cumming, Baker & Velpmen, Murchison, Cumming & Baker, Michael B. Lawler, Tobias C. Tolzmann and Joel Kreiner for Defendant, Cross-complainant and Appellant.

OPINION

BEACH, J.—L. Gene Allard sued the Church of Scientology for malicious prosecution. Defendant cross-complained for conversion. A jury verdict and judgment were entered for Allard on the complaint for $50,000 in compensatory damages and $250,000 in punitive damages. Judgment was entered for Allard and against the Church of Scientology on the cross-complaint. Defendant-cross complainant appeals from the judgment.

FACTS:

The evidence in the instant case is very conflicting. We relate those facts supporting the successful party and disregard the contrary showing. (*Nestle* v. *City of Santa Monica*, 6 Cal.3d 920, 925-926 [101 Cal.Rptr. 568, 496 P.2d 480].)

In March 1969, L. Gene Allard became involved with the Church of Scientology in Texas. He joined Sea Org in Los Angeles and was sent to San Diego for training. While there, he signed a billion-year contract agreeing to do anything to help Scientology and to help clear the planet of the "reactive people." During this period he learned about written policy directives that were the "policy" of the church, emanating from L. Ron Hubbard, the founder of the Church of Scientology.[1] After training on the ship, respondent was assigned to the Advanced Organization in Los Angeles, where he became the director of disbursements. He later became the Flag Banking Officer.

[1]One such policy, to be enforced against "enemies" or "suppressive persons" was that formerly titled "fair game." That person "[m]ay be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed." (Exhibit 1.)

Alan Boughton, Flag Banking Officer International, was respondent's superior. Only respondent and Boughton knew the combination to the safe kept in respondent's office. Respondent handled foreign currency, American cash, and various travelers' checks as part of his job.

In May or June 1969, respondent told Boughton that he wanted to leave the church. Boughton asked him to reconsider. Respondent wrote a memo and later a note; he spoke to the various executive officers. They told him that the only way he could get out of Sea Org was to go through "auditing" and to get direct permission from L. Ron Hubbard. Respondent wrote to Hubbard. A chaplain of the church came to see him. Lawrence Krieger, the highest ranking justice official of the church in California, told respondent that if he left without permission, he would be fair game and "You know we'll come and find you and we'll bring you back, and we'll deal with you in whatever way is necessary."

On the night of June 7 or early morning of June 8, 1969, respondent went to his office at the Church of Scientology and took several documents from the safe. These documents were taken by him to the Internal Revenue Service in Kansas City; he used them to allege improper changes in the records of the church. He denies that any Swiss francs were in the safe that night or that he took such Swiss francs. Furthermore, respondent denies the allegation that he stole various travelers' checks from the safe. He admitted that some travelers' checks had his signature as an endorsement, but maintains that he deposited those checks into an open account of the Church of Scientology. There is independent evidence that tends to corroborate that statement. Respondent, having borrowed his roommate's car, drove to the airport and flew to Kansas City, where he turned over the documents to the Internal Revenue Service.

Respondent was arrested in Florida upon a charge of grand theft. Boughton had called the Los Angeles Police Department to report that $23,000 in Swiss francs was missing. Respondent was arrested in Florida; he waived extradition and was in jail for 21 days. Eventually, the charge was dismissed. The deputy district attorney in Los Angeles recommended a dismissal in the interests of justice.[2]

[2]Leonard J. Shaffer, the deputy district attorney, testified outside the presence of the jury that members of the church were evasive in answering his questions. He testified that the reasons for the dismissal were set forth in his recommendation; the dismissal was not part of a plea bargain or procedural or jurisdictional issue.

CONTENTIONS ON APPEAL:

1. Respondent's trial counsel engaged in flagrant misconduct throughout the proceedings below and thereby deprived appellant of a fair trial.

2. The verdict below was reached as a result of (a) counsel's ascription to appellant of a religious belief and practices it did not have and (b) the distortion and disparagement of its religious character, and was not based upon the merits of this case. To allow a judgment thereby achieved to stand would constitute a violation of appellant's free exercise of religion.

3. Respondent failed to prove that appellant maliciously prosecuted him and therefore the judgment notwithstanding the verdict should have been granted.

4. The refusal of the trial court to ask or permit voir dire questions of prospective jurors pertaining to their religious prejudices or attitudes deprived appellant of a fair trial.

5. It was prejudicial error to direct the jury, in its assessment of the malicious prosecution claim, to disregard evidence that respondent stole appellant's Australian and American Express travelers' checks.

6. The order of the trial court in denying to appellant discovery of the factual basis for the obtaining of a dismissal by the district attorney of the criminal case People v. Allard was an abuse of discretion and a new trial should be granted and proper discovery permitted.

7. Respondent presented insufficient evidence to support the award of $50,000 in compensatory damages which must have been awarded because of prejudice against appellant.

8. Respondent failed to establish corporate direction or ratification and also failed to establish knowing falsity and is therefore not entitled to any punitive damages.

9. Even if the award of punitive damages was proper in this case, the size of the instant reward, which would deprive appellant church of more

than 40 percent of its net worth, is grossly excessive on the facts of this case.

10. There was lack of proper instruction regarding probable cause.[3]

DISCUSSION:

1. *There was no prejudicial misconduct by respondent's trial counsel, and appellant was not deprived of a fair trial.*

Appellant claims that it was denied a fair trial through the statements, questioning, and introduction of certain evidence by respondent's trial counsel. *Love* v. *Wolf,* 226 Cal.App.2d 378 [38 Cal.Rptr. 183], is cited as authority.

We have reviewed the entire record and find appellant's contentions to be without merit. Several of counsel's individual statements and questions were inappropriate. However, there often were no objections by counsel for appellant where an objection and subsequent admonition would have cured any defect; or there was an objection, and the trial court judiciously admonished the jury to disregard the comment. Except for these minor and infrequent aberrations, the record reveals an exceptionally well-conducted and dispassionate trial based on the evidence presented.

As in *Stevens* v. *Parke, Davis & Co.*, 9 Cal.3d 51, 72 [107 Cal.Rptr. 45, 507 P.2d 653], a motion for a new trial was made, based in part upon the alleged misconduct of opposing counsel at trial. **(1)** What was said in *Stevens* applies to the instant case. " 'A trial judge is in a better position than an appellate court to determine whether a verdict resulted wholly, or in part, from the asserted misconduct of counsel and his conclusion in the matter will not be disturbed unless, under all the circumstances, it is plainly wrong.' [Citation.] From our review of the instant record, we agree with the trial judge's assessment of the conduct of plaintiff's counsel and for the reasons stated above, we are of the opinion that defendant has failed to demonstrate prejudicial misconduct on the part of such counsel." (*Stevens* v. *Parke, Davis & Co., supra,* 9 Cal.3d at p. 72.)

2. *The procedure and verdict below does not constitute a violation of appellant's First Amendment free exercise of religion.*

[3]This issue is raised for the first time in appellant's reply brief.

(2) Appellant contends that various references to practices of the Church of Scientology were not supported by the evidence, were not legally relevant, and were unduly prejudicial. The claim is made that the trial became one of determining the validity of a religion rather than the commission of a tort.

The references to which appellant now objects were to such practices as "E-meters," tin cans used as E-meters, the creation of religious doctrine purportedly to "get" dissidents, and insinuations that the Church of Scientology was a great money making business rather than a religion.

The principal issue in this trial was one of credibility. If one believed defendant's witnesses, then there was indeed conversion by respondent. However, the opposite result, that reached by the jury, would naturally follow if one believed the evidence introduced by respondent. Appellant repeatedly argues that the introduction of the policy statements of the church was prejudicial error. However, those policy statements went directly to the issue of credibility. Scientologists were allowed to trick, sue, lie to, or destroy "enemies." (Exhibit 1.) If, as he claims, respondent was considered to be an enemy, that policy was indeed relevant to the issues of this case. That evidence well supports the jury's implied conclusion that respondent had not taken the property of the church, that he had merely attempted to leave the church with the documents for the Internal Revenue Service, and that those witnesses who were Scientologists or had been Scientologists were following the policy of the church and lying to, suing and attempting to destroy respondent. Evidence of such policy statements were damaging to appellant, but they were entirely relevant. They were not prejudicial. A party whose reprehensible acts are the cause of harm to another and the reason for the lawsuit by the other cannot be heard to complain that its conduct is so bad that it should not be disclosed. The relevance of appellant's conduct far outweighs any claimed prejudice.[4]

We find the introduction of evidence of the policy statements and other peripheral mention of practices of the Church of Scientology not to be error. In the few instances where mention of religious practices may have been slightly less germane than the policy statements regarding fair game, they were nonetheless relevant and there was no prejudice to appellant by the introduction of such evidence.

[4]The trial court gave appellant almost the entire trial within which to produce evidence that the fair game policy had been repealed. Appellant failed to do so, and the trial court thereafter permitted the admission of Exhibit 1 into evidence.

3. *The trial court properly denied the motion for judgment notwithstanding the verdict.*

(3) Appellant claimed that it had probable cause to file suit against respondent. The claim is made that even if Alan Boughton did take the checks from the safe, knowledge of that act should not be imputed to appellant church.

Based on the policy statements of appellant that were introduced in evidence, a jury could infer that Boughton was within the scope of his employment when he stole the francs from the safe or lied about respondent's alleged theft. Inferences can be drawn that the church, through its agents, was carrying out its own policy of fair game in its actions against respondent. Given that view of the evidence, which as a reviewing court we must accept, there is substantial evidence proving that appellant maliciously prosecuted respondent. Therefore, the trial court did not err in denying the motion for the judgment notwithstanding the verdict.

4. *The trial court performed proper voir dire of prospective jurors.*

(4) Appellant claims that the trial court refused to ask or permit voir dire questions of prospective jurors pertaining to their religious prejudices or attitudes. The record does not so indicate. Each juror was asked if he or she had any belief or feeling toward any of the parties that might be regarded as a bias or prejudice for or against any of them. Each juror was also asked if he or she had ever heard of the Church of Scientology. If the juror answered affirmatively, he or she was further questioned as to the extent of knowledge regarding Scientology and whether such knowledge would hinder the rendering of an impartial decision. One juror was excused when she explained that her husband is a clergyman and that she knows a couple that was split over the Church of Scientology.

(5) The trial court's thorough questioning served the purpose of voir dire, which is to select a fair and impartial jury, not to educate the jurors or to determine the exercise of peremptory challenges. (*Rousseau* v. *West Coast House Movers*, 256 Cal.App.2d 878, 882 [64 Cal.Rptr. 655].)

5. *It was not prejudicial error to direct the jury, in its assessment of the malicious prosecution claim, to disregard evidence that respondent stole appellant's Australian and American Express travelers' checks.*

(6) Appellant submits that evidence of respondent's purported theft of the Australian and American Express travelers' checks should have been admitted as to the issue of malicious prosecution as well as the cross-complaint as to conversion. If there were any error in this regard, it could not possibly be prejudicial since the jury found for respondent on the cross-complaint. It is evident that the jury did not believe that respondent stole the travelers' checks; therefore, there could be no prejudice to appellant by the court's ruling.

6. *Appellant suffered no prejudice by the trial court's denial of discovery of the factual basis for obtaining of the dismissal by the district attorney.*

(7) Prior to trial, appellant apparently sought to discover the reasons underlying the dismissal of the criminal charges against respondent. This was relevant to the instant case since one of the elements of a cause of action for malicious prosecution is that the criminal prosecution against the plaintiff shall have been favorably terminated. (*Jaffe* v. *Stone*, 18 Cal.2d 146 [114 P.2d 335, 135 A.L.R. 775].)

Whether or not the lower court was justified in making such an order, the denial of discovery along these lines could not be prejudicial. During the trial, counsel for all parties stipulated that the criminal proceedings against Allard were terminated *in his favor* by a dismissal by a judge of that court upon the recommendation of the district attorney.

In addition, there was a hearing outside the presence of the jury in which the trial court inquired of the deputy district attorney as to the reasons for the dismissal. It was apparent at that time that the prospective witnesses for the Church of Scientology were considered to be evasive. There was no prejudice to appellant since the deputy district attorney was available at trial. Earlier knowledge of the information produced would not have helped defendant. We find no prejudicial error in the denial of this discovery motion.

7. *The award of $50,000 compensatory damages was proper.*

Appellant contends that based upon the evidence presented at trial, the compensatory damage award is excessive. In addition, appellant contends that the trial court erred in not allowing appellant to introduce evidence of respondent's prior bad reputation.

(8a) There was some discussion at trial as to whether respondent was going to claim damaged reputation as part of general damages. The trial court's initial reaction was to allow evidence only of distress or emotional disturbance; in return for no evidence of damaged reputation, appellant would not be able to introduce evidence of prior bad reputation. The court, however, relying on the case of *Clay* v. *Lagiss*, 143 Cal.App.2d 441 [299 P.2d 1025], held that lack of damage to reputation is not admissible. Therefore, respondent was allowed to claim damage to reputation without allowing appellant to introduce evidence of his prior bad reputation.

In matters of slander that are libelous per se, for example the charging of a crime, general damages have been presumed as a matter of law. (*Douglas* v. *Janis*, 43 Cal.App.3d 931, 940 [4] [118 Cal.Rptr. 280], citing *Clay* v. *Lagiss*, *supra*, 143 Cal.App.2d at p. 448. Compare *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323 [41 L.Ed.2d 789, 94 S.Ct. 2997].)[5] **(9)** Damages in malicious prosecution actions are similar to those in defamation. Therefore, damage to one's reputation can be presumed from a charge, such as that in the instant case that a person committed the crime of theft. **(8b)** In any event, as the trial court in the instant case noted, there was no offer of proof regarding respondent's prior bad reputation; any refusal to allow possible evidence on that subject has not been shown to be error, much less prejudicial error.

(10) Appellant further contends that the amount of compensatory damages awarded was excessive and that the jury was improperly instructed regarding compensatory damages. The following modified version of BAJI Nos. 14.00 and 14.13 was given:

"If, under the court's instructions, you find that plaintiff is entitled to a verdict against defendant, you must then award plaintiff damages in an amount that will reasonably compensate him for each of the following elements of loss or harm, which in this case are presumed to flow from

[5]The Supreme Court held in *Gertz* v. *Robert Welch, Inc.*, *supra*, 418 U.S. 323, 349 [41 L.Ed.2d 789, 810], an action for defamation, that "the States may not permit recovery of presumed or punitive damages, *at least when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth.*" (Italics added.) The instant case is distinguishable from *Gertz*. Initially, the interests protected by a suit for malicious prosecution include misuse of the judicial system itself; a party should not be able to claim First Amendment protection maliciously to prosecute another person. Secondly, the jury in the instant case must have found "knowledge of falsity or reckless disregard for the truth" in order to award punitive damages herein. Therefore, even under *Gertz*, a finding of presumed damages is not unconstitutional.

the defendant's conduct without any proof of such harm or loss: damage to reputation, humiliation and emotional distress.

"No definite standard or method of calculation is prescribed by law to fix reasonable compensation for these presumed elements of damage. Nor is the opinion of any witness required as to the amount of such reasonable compensation. Furthermore, the argument of counsel as to the amount of damages is not evidence of reasonable compensation. In making an award for damage to reputation, humiliation and emotional distress, you shall exercise your authority with calm and reasonable judgment, and the damages you find shall be just and reasonable."

The following instruction was requested by defendant and was rejected by the trial court: "The amount of compensatory damages should compensate plaintiff for actual injury suffered. The law will not put the plaintiff in a better position than he would be in had the wrong not been done." Accompanying the request for that motion is a citation to *Staub* v. *Muller*, 7 Cal.2d 221 [60 P.2d 283], and *Basin Oil Co.* v. *Baash-Ross Tool Co.*, 125 Cal.App.2d 578 [271 P.2d 122].

The Supreme Court has recognized that "Damages potentially recoverable in a malicious prosecution action are substantial. They include out-of-pocket expenditures, such as attorney's and other legal fees . . .; business losses . . .; general harm to reputation, social standing and credit . . .; mental and bodily harm . . .; and exemplary damages where malice is shown . . . ." (*Babb* v. *Superior Court*, 3 Cal.3d 841, 848, fn. 4 [92 Cal.Rptr. 179, 479 P.2d 379].) While these damages are compensable, it is the determination of the damages by the jury with which we are concerned. Appellant seems to contend that the jury must have actual evidence of the damages suffered and the monetary amount thereof.

" 'The determination of the jury on the issue of damages is conclusive on appeal unless the amount thereof is so grossly excessive that it can be reasonably imputed solely to passion or prejudice in the jury. [Citations.]' " (*Douglas* v. *Janis*, *supra*, 43 Cal.App.3d at p. 940.) The presumed damage to respondent's reputation from an unfounded charge of theft, along with imprisonment for 21 days, and the mental and emotional anguish that must have followed are such that we cannot say that the jury's finding of $50,000 in compensatory damages is unjustified.

That amount does not alone demonstrate that it was the result of passion and prejudice.

8. *Respondent is entitled to punitive damages.*

(11) Appellant cites the general rule that although an employer may be held liable for an employee's tort under the doctrine of respondeat superior, ordinarily he cannot be made to pay punitive damages where he neither authorized nor ratified the act. (4 Witkin, Summary of Cal. Law. (8th ed.) § 855, p. 3147.)[6] Appellant claims that the Church of Scientology, which is the corporate defendant herein, never either authorized or ratified the malicious prosecution.

The finding of authorization may be based on many grounds in the instant case. For example, the fair game policy itself was initiated by L. Ron Hubbard, the founder and chief official in the church. (Exhibit 1.) It was an official authorization to treat "enemies" in the manner in which respondent herein was treated by the Church of Scientology.

Furthermore, all the officials of the church to whom respondent relayed his desire to leave were important managerial employees of the corporation. (See 4 Witkin, Summary of Cal. Law (8th ed.) *supra*, § 857, p. 3148.)

The trier of fact certainly could have found authorization by the corporation of the act involved herein.

9. *The award of punitive damages.*

(12) Any party whose tenets include lying and cheating in order to attack its "enemies" deserves the results of the risk which such conduct entails. On the other hand, this conduct may have so enraged the jury that the award of punitive damages may have been more the result of

[6]We again note that *Gertz* v. *Robert Welch, Inc.*, *supra*, precludes the award of punitive damages in defamation actions "at least when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth." The facts of the instant case fall within that categorization, so a finding of punitive damages was proper. Moreover, as we noted above, an egregious case of malicious prosecution subjects the judicial system itself to abuse, thereby interfering with the constitutional rights of all litigants. Punitive damages may therefore be more easily justified in cases of malicious prosecution than in cases of defamation. The societal interests competing with First Amendment considerations are more compelling in the former case.

feelings of animosity, rather than a dispassionate determination of an amount necessary to assess defendant in order to deter it from similar conduct in the future. In our view the disparity between the compensatory damages ($50,000) and the punitive damages ($250,000) suggests that animosity was the deciding factor. Our reading of the decisional authority compels us to conclude that we should reduce the punitive damages. We find $50,000 to be a reasonable amount to which the punitive damages should be reduced. We perceive this duty, and have so modified the punitive damages award not with any belief that a reviewing court more ably may perform it.[7] **(13)** Simply stated the decisional authority seems to indicate that the reviewing court should examine punitive damages and where necessary modify the amount in order to do justice. (*Cunningham* v. *Simpson*, 1 Cal.3d 301 [81 Cal.Rptr. 855, 461 P.2d 39]; *Forte* v. *Nolfi*, 25 Cal.App.3d 656 [102 Cal.Rptr. 455]; *Shroeder* v. *Auto Driveaway Company*, 11 Cal.3d 908 [114 Cal.Rptr. 622, 523 P.2d 662]; *Livesey* v. *Stock*, 208 Cal. 315, 322 [281 P. 70].)

10. *Instruction on probable cause.*

Appellant requested an instruction stating: "Where it is proven that a judge has had a preliminary hearing and determined that the facts and evidence show probable cause to believe the plaintiff guilty of the offense charged therefore, ordering the plaintiff to answer a criminal complaint, this is *prima facie* evidence of the existence of probable cause." The trial court gave the following instruction: "The fact that plaintiff was held to answer the charge of grand theft after a preliminary hearing is evidence tending to show that the initiator of the charge had probable cause. This fact is to be considered by you along with all the other evidence tending to show probable cause or the lack thereof."[8]

Appellant claimed for the first time in its reply brief that the trial court's lack of proper instruction regarding probable cause was prejudicial error. Since this issue was raised for the first time in appellant's reply brief, we decline to review the issue.[9]

[7] See dissent in *Cunningham* v. *Simpson*, 1 Cal.3d 301 [81 Cal.Rptr. 855, 461 P.2d 39].

[8] This instruction was given on the court's own motion.

[9] "We note that given the circumstances of the instant case, the juror could have easily been misled by the requested instruction. If the evidence showed that the agents and employees of appellant were lying, then the preliminary hearing at which they also testified would not be valid. While the jurors may of course consider that the magistrate at the preliminary hearing found probable cause, that should be in no way conclusive in the jury's determination of probable cause.

The judgment is modified by reducing the award of punitive damages only, from $250,000 to the sum of $50,000. As modified the judgment is in all other respects affirmed.

Costs on appeal are awarded to respondent Allard.

Roth, P. J., and Fleming, J., concurred.

A petition for a rehearing was denied June 17, 1976, and the petitions of both parties for a hearing by the Supreme Court were denied July 15, 1976.

employment.[5] By this reasoning heart disease "manifests itself" when it produces symptoms indicative of its presence that are capable of being discerned by medical tests regardless whether they are in fact discerned. This reading is untenable. We cannot say that a symptom manifests itself when it has not in fact been revealed to anyone.[6]

[29]Moreover, this alternative reading of "manifests itself" is no more plausible than that the term means to give evidence that is detected leading to a medical diagnosis. If such a construction were semantically permissible, the statute would be ambiguous.[7] In that event, we would be constrained to accept the application of the language that favors Smith. "Although the employee bears the burden of proving that his injury was sustained in the course of his employment, the established legislative policy is that the Workmen's Compensation Act must be liberally construed in the employee's favor (Lab.Code, § 3202), and all reasonable doubts as to whether an injury arose out of employment are to be resolved in favor of the employee." (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 317, 90 Cal.Rptr. 355, 475 P.2d 451.)

Disposition

The only tenable reading of section 3212.5 applicable to this case shows that Smith was entitled to the presumption afforded by the section. The Board's decision was based upon the contrary view. The decision of the Board is annulled and the case is remanded to the Board for proceedings consistent with this opinion.

SPARKS and DAVIS, JJ., concur.

5. We imply no view on the latter premise.

6. However, if there is evidence which shows the time when the disabling heart trouble first produced undetected signs capable of detection and that time precedes the applicable period of employment the presumption should be unavailing. That circumstance does not entail the view that heart trouble which is first detected during the applicable period of employment has not "manifested itself" during that period. Rather, in such a case the presumption is "controverted by other evidence" which allows the Board to find the presumption has been overcome. (See § 3212.5.)

7. "The question of meaning is framed by the competing claims of the parties regarding the application of the [contested] language to the material facts of the case. (Citations.) [¶] These claims must then be tested against the permissible uses of the language upon which the claims are founded, for the meaning of language is to be found in its usage and the occasion of a usage is an application of the language to particular circumstances." (*National Auto. & Cas. Ins. Co. v. Contreras* (1987) 193 Cal.App.3d 831, 836, 238 Cal.Rptr. 627.) Thus a material ambiguity appears only if the semantically permissible applications of the language to the material facts of the case reveal a conflict of significance to its outcome. In such case some rule of resolution must be applied as a tie-breaker.

212 Cal.App.3d 872

[872]**Larry WOLLERSHEIM, Plaintiff and Respondent,**

v.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Defendant and Appellant.

No. B023193.

Court of Appeal, Second District, Division 7.

July 18, 1989.

Review Denied Oct. 26, 1989.

Former member of religious organization brought action against organization alleging intentional and negligent infliction of severe emotional injury. The Superior Court, Los Angeles County, Ronald Swearinger, J., entered jury verdict in amount of $30,000,000 in favor of former member and organization appealed. The Court of Appeal, Johnson, J., held that: (1) practices inflicted upon former member were conducted in coercive environment and thus were not qualified as voluntary religious practices entitled to constitutional protec-

tion; (2) member could not maintain action for negligent infliction of emotional distress; and (3) compensatory and punitive damage awards were excessive.

Reversed in part, affirmed in part as modified.

1. Damages ⇐50.10

Prima facie case of intentional infliction of emotional distress requires outrageous conduct by defendant, intention by defendant to cause, or reckless disregard of probability of causing, emotional distress, severe emotional distress and actual and proximate causation of emotional distress.

2. Damages ⇐50.10

Conduct by religious organization met criteria for prima facie case of tort of intentional infliction of emotional distress; organization's conduct in coercing member into continuing "auditing" although his sanity was threatened, compelling him to abandon his family, and subjecting him to financial ruin were manifestly outrageous, which if not wholly calculated to cause emotional distress unquestionably constituted reckless disregard for likelihood of causing such distress, and which caused severe emotional distress to former member.

3. Constitutional Law ⇐84(1)

Establishment Clause of First Amendment guarantees government will not use its resources to impose religion upon us while Free Exercise Clause guarantees that government will not prevent its citizens from pursuing any religion they choose. U.S.C.A. Const.Amend. 1.

4. Constitutional Law ⇐84(1)

In order for governmental policies which have effect of promoting religion to pass scrutiny under Establishment Clause of First Amendment, they must have secular purpose, their primary effects must be ones which neither advance nor inhibit religion and they must avoid any excessive entanglements with religion. U.S.C.A. Const.Amend. 1.

5. Constitutional Law ⇐84(2)

Under free exercise clause of First Amendment, government may not constitutionally burden any belief no matter how outlandish or dangerous but it may burden expression of belief which adversely affects significant societal interests. U.S.C.A. Const.Amend. 1.

6. Constitutional Law ⇐84(2)

In order for government to burden expression of religious belief without violating Free Exercise Clause of First Amendment, government must be seeking to further important state interest, burden on expression must be essential to further state interest, type and level of burden imposed must be minimum required to achieve state interest, and measure imposing burden must apply to everyone, not merely to those who have religious belief. U.S.C.A. Const.Amend. 1.

7. Constitutional Law ⇐84(2)

Only most compelling of state interest, such as preservation of life or state itself will justify outright ban on important method of expressing religious belief. U.S.C.A. Const.Amend. 1.

8. Constitutional Law ⇐84(1)

Less significant state interest may be enough to justify burden on form of expression of religion where burden is less direct or form of expression less central to exercise of particular religion. U.S.C.A. Const.Amend. 1.

9. Constitutional Law ⇐84(1)

In order to be entitled to constitutional protections under Freedom of Religion Clauses, system of thought to which course of conduct relates must qualify as "religion" rather than philosophy or science or personal preference, course of conduct must qualify as expression of that religion and not just activity that religious people happen to be doing, and religious expression must not inflict so much harm that there is compelling state interest in discouraging practice which outweighs values served by freedom of religion. U.S.C.A. Const.Amend. 1.

10. Constitutional Law ⇐84.5(7)

Evidence before trial court justified judge's determination that Scientology qualifies as religion within meaning of freedom of religion clauses of Federal and California Constitutions. U.S.C.A. Const.Amend. 1; West's Ann.Cal. Const. Art. 1, § 4.

11. Constitutional Law ⇐84.5(7)

Assuming that retributive conduct known as "fair game" was core practice of religious organization, it did not qualify as "religious practice" for constitutional protection; former member did not suffer his economic harm as unintended byproduct of former religionists' practice of refusing to socialize with him but instead was bankrupted by campaign his former religionists carefully designed with specific intent to create financial ruin. U.S.C.A. Const. Amend. 1.

12. Constitutional Law ⇐84.5(7)

"Auditing" involving one-on-one dialogue between religious organization's auditor and student is constitutionally protected religious practice if conducted in noncoercive environment, but is not protected where conducted under threat of economic, psychological and political retribution; voluntary "auditing" is similar to techniques other religions use to motivate "sinners" to change behaviors.

13. Constitutional Law ⇐84.5(7)

"Auditing" as practiced against religious organization's former member was coerced and thus was not protected religious activity under First Amendment; church member was threatened with accumulated debt of between $10,000 and $50,000 under organization's "freeloader debt" policy if he left organization, as well as financial ruin in his business under "fair game" policy and further, some auditing was accepted by former member under threat of physical coercion. U.S.C.A. Const.Amend. 1.

14. Constitutional Law ⇐84.5(7)

Practice of "disconnect" of religious organization which required member to cease contact with his family, including wife and parents, was not protected religious practice given coercive environment imposed upon member; "disconnect" policy was imposed on member by organization with knowledge that member was psychologically susceptible and would suffer severe emotional injury as result. U.S.C.A. Const.Amend. 1.

15. Constitutional Law ⇐84.5(7)

Religious organization's improper disclosure of information which former member gave during confidential religious sessions was not religious expression immunized from liability by Constitution. U.S.C.A. Const.Amend. 1.

16. Damages ⇐49.10

Former member of religious organization could not prevail in action for negligent infliction of emotional injury against organization; organization owed no duty to members or former members with respect to negligent acts which might inadvertently cause psychological or economic injury.

17. Damages ⇐216(10)

Religious organization was not entitled to jury instruction which restated elements of former member's cause of action for intentional infliction of emotional distress or outrageous conduct with slant favoring organization's position by implication that jury was to disregard evidence of organization's acts which did not fit precisely under courses of conduct as they defined them; some of evidence introduced at trial related to acts relevant to issues of organization's state of mind and whether former member was voluntarily participating in organization's practices or was doing so within coercive environment and thus, instruction as requested would have been misleading.

18. Trial ⇐261

Religious organization was not entitled to jury instruction requiring jury to disregard evidence presented which was relevant to nonsuited fraud counts in action brought by former member which alleged intentional and negligent infliction of emotional injury; requested instruction was stated in overbroad terms and unduly slanted in organization's direction which could have misled jury into believing that it must disregard evidence which provided context

for intentional infliction count or which went to presence or absence of coercion and organization's state of mind.

19. Damages ⇐178

Relevancy of evidence regarding actions religious organization took toward third persons was not overwhelmed by prejudicial effect and thus admission of such evidence was proper in former member's action alleging intentional and negligent infliction of emotional injury; evidence was highly relevant to show network of sanctions and coercive influences with which organization had surrounded former member.

20. Damages ⇐130(1)

Compensatory damage award in amount of $5,000,000 in favor of former member of religious organization against organization was excessive, and evidence only justified award of $500,000; former member's psychological injury although permanent and severe was not totally disabling and organization's conduct only aggravated preexisting psychological condition but did not create it.

21. Appeal and Error ⇐1004.1(10)
Damages ⇐94

In reviewing punitive damages award, appellate court applies standard similar to that used in reviewing compensatory damages; court inquires whether after reviewing entire record in light most favorable to judgment, award was result of passion or prejudice.

22. Damages ⇐94

Factors to be considered in reviewing propriety of punitive damage award include degree of reprehensibility of defendant's conduct, relationship between amount of award and actual harm suffered, and relationship of punitive damages to defendant's net worth.

23. Damages ⇐94

Punitive damage award in amount of $25 million against religious organization for intentional infliction of emotional distress upon former member was excessive and required reduction to $2 million; award constituted 150% of organization's net worth and conduct by organization did not reach level of outrageousness to justify such award.

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[877] Rabinowitz, Boudin, Standard, Krinsky & Lieberman and Eric M. Lieberman and Terry Gross, New York City, Lenske, Lenske & Heller and Lawrence E. Heller, Woodland Hills, and Michael Lee Hertzberg, New York City, for defendant and appellant.

Greene, O'Reilly, Broillet, Paul, Simon, McMillan, Wheeler & Rosenberg, Los Angeles, and Charles B. O'Reilly, Santa Monica, for plaintiff and respondent.

Boothby, Ziprick & Yingst and William F. Ziprick, San Bernardino, Lee Boothby, Washington, D.C., and James M. Parker, Newport Beach, as amicus curiae on behalf of defendant and appellant.

JOHNSON, Associate Justice.

This appeal arises after a jury awarded $30 million in compensatory and punitive damages to a former member of the Church of Scientology (the Church). The complaint alleged appellants [878] intentionally and negligently inflicted severe emotional injury on respondent through certain practices, including "auditing," "disconnect," and "fair game." Since the trial court granted summary adjudication that Scientology is a religion and "auditing" is a religious practice, the trial proceeded under the assumption they were. We conclude there was substantial evidence to support a factual finding the "auditing," as well as other practices in this case, were conducted in a coercive environment. Thus, none of them qualified as "*voluntary* religious practices" entitled to constitutional protection under the First Amendment religious freedom guarantees. At the same time, we conclude both the compensatory and punitive damages the jury awarded in this case are excessive. Consequently, we modify the judgment to reduce both of these damage awards.

FACTS AND PROCEEDINGS BELOW

Construing the facts most favorably to the judgment, as we must, respondent Larry Wollersheim was an incipient manic-depressive for most of his life. Appellants Scientology and its leaders were aware of Wollersheim's susceptibility to this mental disorder. What appellants did to him during and after his years in Scientology aggravated Wollersheim's mental condition, driving him into deep depressive episodes and causing him severe mental anguish. Furthermore, Scientology engaged in a practice of retribution and threatened retribution—often called "fair game"—against members who left or otherwise posed a threat to the organization. This practice coerced Wollersheim into continued participation in the other practices of Scientology which were harming him emotionally.

Wollersheim first became acquainted with Scientology in early 1969 when he attended a lecture at the "Church of Scientology of San Francisco." During the next few months he completed some basic courses at the San Francisco institution. He then returned to his home state of Wisconsin and did not resume his scientology training for almost two years.

When Wollersheim did start again it was at the appellant, Church of Scientology of California, headquartered in Los Angeles. From 1972 through 1979 Wollersheim underwent "auditing" at both the basic and advanced levels. In 1973 he worked several months as a staff member at the Church of Scientology Celebrity Center located in Los Angeles. In 1974, despite his repeated objections, Wollersheim was persuaded to participate in auditing aboard a ship maintained by Scientology. While on the ship, Wollersheim was forced to undergo a strenuous regime which began around 6:00 A.M. and continued until 1:00 the next morning. Further, Wollersheim and others were forced to sleep nine deep in the ship's hold. During his six weeks under these conditions, Wollersheim lost 15 pounds.

[1,879] Wollersheim attempted to escape from the ship because he felt he "was dying and losing [his] mind." His escape was thwarted by Scientology members who seized Wollersheim and held him captive until he agreed to remain and continue with the auditing and other religious practices taking place on the vessel. One of the psychiatric witnesses testified Wollersheim's experience on the ship was one of five cataclysmic events underlying the diagnosis of his mental illness and its cause.

At another stage Scientology auditors convinced him to "disconnect" from his wife and his parents and other family members because they had expressed concerns about Scientology and Wollersheim's continued membership. "Disconnect" meant he was no longer to have any contact with his family.

There also was evidence of a practice called "freeloader debt." "Freeloader debt" was accumulated when a staff member received Church courses, training or auditing at a reduced rate. If the member later chose to leave, he or she was presented with a bill for the difference between the full price normally charged to the public and the price originally charged to the member. Appellants maintained a "freeloader debt" account for Wollersheim.

During his years with Scientology Wollersheim also started and operated several businesses. The most successful was the last, a service which took and printed photographic portraits. Most of the employees and many of the customers of this business were Scientologists.

By 1979, Wollersheim's mental condition worsened to the point he actively contemplated suicide. Wollersheim began experiencing personality changes and pain. When the Church learned of Wollersheim's condition, Wollersheim was sent to the Flag Land Base for "repair."

During auditing at Flag Land Base, Wollersheim's mental state deteriorated further. He fled the base and wandered the streets. A guardian later arranged to meet Wollersheim. At that meeting, the guardian told Wollersheim he was prohibited from ever speaking of his problems with a priest, a doctor or a psychiatrist.

Ultimately Wollersheim became so convinced auditing was causing him psychiat-

ric problems he was willing to risk becoming a target of "freeloader debt" and "fair game." Evidence was introduced that, at least during the time relevant to Wollersheim's case, "fair game" was a practice of retribution Scientology threatened to inflict on "suppressives," which included people who left the organization or anyone who could pose a threat to the [1880] organization. Once someone was identified as a "suppressive," all Scientologists were authorized to do anything to "neutralize" that individual —economically, politically, and psychologically.

After Wollersheim left the organization Scientology leaders initiated a "fair game" campaign which among other things was calculated to destroy Wollersheim's photography enterprise. They instructed some Scientology members to leave Wollersheim's employ, told others not to place any new orders with him and to renege on bills they owed on previous purchases from the business. This strategy shortly drove Wollersheim's photography business into bankruptcy. His mental condition deteriorated further and he ended up under psychiatric care.

Wollersheim thereafter filed this lawsuit alleging fraud, intentional infliction of emotional injury, and negligent infliction of emotional injury. At the law-and-motion stage, a trial court granted summary adjudication on two vital questions. It ruled Scientology is a religion and "auditing" is a religious practice of that religion.

During trial, Wollersheim's experts testified Scientology's "auditing" and "disconnect" practices constituted "brain-washing" and "thought reform" akin to what the Chinese and North Koreans practiced on American prisoners of war. They also testified this "brain-washing" aggravated Wollersheim's bipolar manic depressive personality and caused his mental illness. Other testimony established Scientology is a hierarchical organization which exhibits near paranoid attitudes toward certain institutions and individuals—in particular, the government, mental health professions, disaffected members and others who criticize the organization or its leadership. Evidence also was introduced detailing Scientology's retribution policy, sometimes called "fair game."

After the evidence was heard, the trial judge dismissed the fraud count but allowed both the intentional and negligent infliction of emotional injury counts to go to the jury. The jury, in turn, returned a general verdict in favor of plaintiff on both counts. It awarded $5 million in compensatory damages and $25 million in punitive damages. The motion for new trial was denied and appellants filed a timely appeal.

DISCUSSION

Appellants raise a broad spectrum of issues all the way from a technical statute of limitations defense to a fundamental constitutional challenge to this entire species of claims against Scientology. If the narrower grounds of appeal had merit and disposed of the case we could avoid confronting the [1881] difficult constitutional questions. But since they do not we must consider Scientology's religious freedom claims.

I. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT WOLLERSHEIM'S CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The cause of action for intentional infliction of emotional injury formed the centerpiece of the case which went to the jury. This claim actually cumulates four courses of conduct which together allegedly inflicted severe emotional damage on the psychologically weak Wollersheim. These courses of conduct are: (1) subjecting Wollersheim to forms of "auditing" which aggravated his predisposition to bipolar mania-depression; (2) psychologically coercing him to "disconnect" from his family; (3) "disclosing personal information" Wollersheim revealed during auditing under a mantle of confidentiality; and, (4) conducting a retributive campaign ("fair game") against Wollersheim and particularly against his business enterprise.

[1] The tort of intentional infliction of emotional distress was created to punish conduct " 'exceeding all bounds usually tolerated by a decent society, of a nature which is especially calculated to cause, and

does cause, mental distress.'" (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 946, 160 Cal. Rptr. 141, 603 P.2d 58.) A prima facie case requires: (1) outrageous conduct by the defendant; (2) an intention by the defendant to cause, or the reckless disregard of the probability of causing, emotional distress; (3) severe emotional distress; and (4) an actual and proximate causation of the emotional distress. (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 300, 253 Cal.Rptr. 97, 763 P.2d 948.)

"Behavior may be considered outrageous if a defendant (1) abuses a relation or position which gives him power to damage the plaintiff's interest; (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress." (*Agarwal v. Johnson, supra*, 25 Cal.3d at p. 946, 160 Cal.Rptr. 141, 603 P.2d 58.)

[2] There is substantial evidence to support the jury's finding on this theory. First, the Church's conduct was manifestly outrageous. Using its position as his religious leader, the Church and its agents coerced Wollersheim into continuing "auditing" although his sanity was repeatedly threatened by this practice. (See pp. 344–346, *infra*.) Wollersheim was compelled to abandon his wife and his family through the policy of disconnect. When his mental illness reached such a level he actively planned his suicide, he [882] was forbidden to seek professional help. Finally, when Wollersheim was able to leave the Church, it subjected him to financial ruin through its policy of "fair game".

Any one of these acts exceeds the "bounds usually tolerated by a decent society," so as to constitute outrageous conduct. In aggregate, there can be no question this conduct warrants liability *unless it is privileged as constitutionally protected religious activity.* (See pp. 338–340, *infra*.)

Second, the Church's actions, if not wholly calculated to cause emotional distress, unquestionably constituted reckless disregard for the likelihood of causing emotional distress. The policy of fair game, by its nature, was intended to punish the person who dared to leave the Church. Here, the Church actively encouraged its members to destroy Wollersheim's business.

Further, by physically restraining Wollersheim from leaving the Church's ship, and subjecting him to further auditing despite his protests, the Church ignored Wollersheim's emotional state and callously compelled him to continue in a practice known to cause him emotional distress.

Third, Wollersheim suffered severe emotional distress. Indeed, his distress was such that he actively considered suicide and suffered such psychiatric injury as to require prolonged professional therapy. (See *Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 397, 89 Cal.Rptr. 78 [severe emotional distress "may consist of any highly unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worry"].)

Finally, there is substantial evidence the Church's conduct proximately caused the severe emotional distress. Wollersheim's bankruptcy and resulting mental distress was the direct result of the Church's declaration that he was fair game. Additionally, according to the psychiatric testimony auditing and disconnect substantially aggravated his mental illness and triggered several severe depressive episodes.

In sum, there is ample evidence to support the jury's verdict on Wollersheim's claim for intentional infliction of emotional distress. This, however, does not conclude our inquiry. As we discuss below, Wollersheim's action may nonetheless be barred if we conclude the Church's conduct was protected under the free exercise clause of the First Amendment.

[883] II. CONSTITUTIONAL RELIGIOUS FREEDOM GUARANTEES DO NOT IMMUNIZE SCIENTOLOGY FROM LIABILITY FOR ANY OF THE ACTIONS ON WHICH WOLLERSHEIM'S INTENTIONAL INFLICTION OF EMOTIONAL INJURY CAUSE OF ACTION IS BASED

Scientology asserts all four courses of conduct comprising the intentional inflic-

tion claim are forms of religious expression protected by the Freedom of Religion clauses of the United States and California Constitutions. We conclude some would not be protected religious activity even if Wollersheim freely participated. We further conclude none of these courses of conduct qualified as protected religious activity in Wollersheim's case. Here they occurred in a coercive atmosphere appellants created through threats of retribution against those who would leave the organization. To explain our conclusions it is necessary to examine the parameters and rationale of the religious freedom provisions in some depth.

A. *The Basic Principles of the "Free Exercise" Clause*

Religious freedom is guaranteed American citizens in just 16 words in the First Amendment. "Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise* thereof; ..." (U.S. Const., Amend. I, italics added.[1])

When it was adopted, the First Amendment only applied to the federal government, not the states. (U.S. Const., 1st Amend. ["*Congress* shall make no law ..."], emphasis added; see *Permoli v. First Municipality* (1845) 44 U.S. (3 How.) 589, 609, 11 L.Ed. 739.) However, following ratification of the Fourteenth Amendment, the First Amendment protections became enforceable against the states via the Fourteenth Amendment's due process clause. (*California v. Grace Brethren Church* (1982) 457 U.S. 393, 396 fn. 1, 102 S.Ct. 2498, 2501 fn. 1, 73 L.Ed.2d 93; *Everson v. Board of Education* (1947) 330 U.S. 1, 8, 67 S.Ct. 504, 508, 91 L.Ed. 711.)

"[T]he application of tort law to activities of a church or its adherents in their furtherance of their religious belief is an exercise of state power. When the imposition of liability would result in the abridgement of the right to free exercise of religious beliefs, recovery in tort is barred." (*Paul v. Watchtower Bible & Tract Soc. of New York* (9th Cir.1987) 819 F.2d 875, 880; accord *Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1114, 252 Cal.Rptr. 122, 762 P.2d 46 ["judicial sanctioning of tort recovery constitutes$_{884}$ state action sufficient to invoke the same constitutional protections applicable to statutes and other legislative actions"]; see *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 277, 84 S.Ct. 710, 724, 11 L.Ed.2d 686.)

[3] As can be seen, the First Amendment creates two very different protections. The "establishment clause"—actually an "*anti*-establishment clause"—guarantees us the government will not use its resources to impose religion on us. The "free exercise clause," on the other hand, guarantees us government will not prevent its citizens from pursuing any religion we choose.

[4] The "establishment clause" comes into play when a government policy has the effect of promoting religion—as by financing religious schools or requiring religious prayers in public schools, and the like. These policies violate the establishment clause unless they survive a three-part test. They must have a secular purpose. Their primary effects must be ones which neither advance nor inhibit religion. And they must avoid any excessive entanglements with religion. (*Lemon v. Kurtzman* (1971) 403 U.S. 602, 612–613, 91 S.Ct. 2105, 2111–2112, 29 L.Ed.2d 745; see also *Committee for Public Education v. Nyquist* (1973) 413 U.S. 756, 773, 93 S.Ct. 2955, 2965, 37 L.Ed.2d 948; *Abington School Dist. v. Schempp* (1963) 374 U.S. 203, 222, 83 S.Ct. 1560, 1571, 10 L.Ed.2d 844.) The "free exercise clause," in contrast to the "establishment clause," was adopted without debate or comment when the First Congress deliberated the Bill of Rights. (Malbin, Religion and Politics: The Intentions of the Authors of the First Amendment (1976).) Thus the courts have turned to other writings by those responsible for the Bill of

1. All discussion in this opinion as to the freedom of religion provisions of the U.S. Constitution applies also to appellants' claims under article I, section 4 of the California Constitution which guarantees "[f]ree exercise and enjoyment of religion without discrimination or preference."

Rights, especially James Madison and Thomas Jefferson, to divine the meaning of "free exercise of religion."

[5, 6] The subsequent cases interpreting these four words make it clear that while the free exercise clause provides absolute protection for a person's religious *beliefs*, it provides only limited protection for the *expression* of those beliefs and especially *actions* based on those beliefs. (*Cantwell v. Connecticut* (1940) 310 U.S. 296, 303–304, 60 S.Ct. 900, 903–904, 84 L.Ed. 1213.) Freedom of belief is absolutely guaranteed, freedom of action is not. Thus government cannot constitutionally burden any belief no matter how outlandish or dangerous. But in certain circumstances it can burden an expression of belief which adversely affects significant societal interests. To do so, the burden on belief must satisfy a four-part test: First, the government must be seeking to further an important—and some opinions suggest a compelling—state interest. Secondly, the burden on expression must be essential to further this state interest. Thirdly, the type and level of burden imposed must be the minimum required to |885achieve the state interest. Finally, the measure imposing the burden must apply to everyone, not merely to those who have a religious belief; that is, it may not discriminate against religion.

A straightforward exposition of three prongs of this test is found in *United States v. Lee* (1981) 455 U.S. 252, 257–258, 102 S.Ct. 1051, 1055–1056, 71 L.Ed.2d 127 where the Supreme Court held: "The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. (Citations omitted.)" All four are mentioned in *Braunfeld v. Brown* (1961) 366 U.S. 599, 607, 81 S.Ct. 1144, 1148, 6 L.Ed.2d 563: "If the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid.... But if the State regulates conduct by enacting a general law within its power, the purpose and effect of which is to advance the State's secular goals, the statute is valid despite its indirect burden on religious observance unless the State may accomplish its purpose by means which do not impose such a burden." (See also *Thomas v. Review Bd., Ind. Empl. Sec. Div.* (1981) 450 U.S. 707, 717–718, 101 S.Ct. 1425, 1431–1432, 67 L.Ed.2d 624; *Wisconsin v. Yoder* (1972) 406 U.S. 205, 220, 92 S.Ct. 1526, 1535, 32 L.Ed.2d 15; *Gillette v. United States* (1971) 401 U.S. 437, 462, 91 S.Ct. 828, 842, 28 L.Ed.2d 168; *Sherbert v. Verner* (1963) 374 U.S. 398, 402–403, 83 S.Ct. 1790, 1793–1794, 10 L.Ed.2d 965; *Cantwell v. Connecticut, supra*, 310 U.S. at pp. 304–305, 60 S.Ct. at pp. 903–904.)

[7] A review of the Supreme Court's "free exercise" rulings also makes it apparent the four critical factors are interrelated. Roughly speaking, the heavier the burden the government imposes on the expression of belief and the more significant the particular form of expression which is burdened, the more important the state interest must be. Or to put it the other way around, the more important the interest the state seeks to further, the heavier the burden it can constitutionally impose on the more important forms of expressing religious belief. Thus, only the most compelling of state interest—such as the preservation of life or of the state itself—will justify an outright ban on an important method of expressing a religious belief. (See, e.g., *Reynolds v. United States* (1878) 98 U.S. 145, 164, 25 L.Ed. 244 [polygamy can be outlawed even though a central religious tenet of the Mormon religion because it "has always been odious among the northern and western nations of Europe, ... and from the earliest history of England has been treated as an *offence against society.*" [Italics added.]]; *Prince v. Massachusetts* (1943) 321 U.S. 158, 170, 64 S.Ct. 438, 444, 88 L.Ed. 645 [parents can be prohibited from allowing their children to distribute religious literature even though this is a religious duty required in order to avoid "everlasting destruction at Armageddon" where necessary to protect |886the health and safety of youth]; *Jacobson v. Massachusetts* (1904) 197 U.S. 11, 26, 25 S.Ct. 358, 361, 49 L.Ed. 643 [adults and children can be compelled to be vacci-

nated for communicable diseases even though their religious beliefs oppose vaccination because as was observed in *Prince v. Massachusetts, supra,* 321 U.S. at pp. 166–167, 64 S.Ct. at pp. 442–443, "[T]he right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death"].)

[8] But a less significant state interest may be enough where the burden is less direct or the form of expression less central to the exercise of the particular religion. (See, e.g., *Goldman v. Weinberger* (1986) 475 U.S. 503, 509–510, 106 S.Ct. 1310, 1314–1315, 89 L.Ed.2d 478 where the military's apparently rather marginal interest in absolutely uniform attire was enough to justify an outright ban against a Jewish officer's apparently rather marginal form of religious expression in wearing a yarmulke [a religious cap] indoors.) In *Bowen v. Roy* (1986) 476 U.S. 693, 106 S.Ct. 2147, 90 L.Ed.2d 735, disapproved on other grounds in *Hobbie v. Unemployment Appeals Commission* (1987) 480 U.S. 136, 141, 107 S.Ct. 1046, 1049, 94 L.Ed.2d 190, the U.S. Supreme Court found the Federal government's interest in administrative convenience in preventing fraud in a benefit program was enough to justify the minimal burden of denying benefits to those who because of religious beliefs refuse to obtain and reveal social security numbers. *Braunfeld v. Brown, supra,* 366 U.S. 599, 605, 81 S.Ct. 1144, 1146 [governmental interest in prohibiting economic activity on Sundays is enough to justify imposing the burden of an economic loss on those orthodox Jews who choose to exercise their religious belief that they not work on Saturdays and thus lose two rather than only one day's opportunity to earn money. "[T]he case before us ... does not make *unlawful* any religious practices of appellants; the Sunday law simply regulates a secular activity and, as applied to appellants, operates so as to make the practice of their religious beliefs *more expensive*"], (italics added.)

[9] We now apply the above principles to the four courses of conduct alleged in Wollersheim's intentional infliction of emotional injury cause of action. To be entitled to constitutional protections under the Freedom of Religion clauses any course of conduct must satisfy three requirements. First, the system of thought to which the course of conduct relates must qualify as a "religion" not a philosophy or science or personal preference. Thus, it is unlikely a psychiatrist could successfully shield himself from malpractice by asserting he was merely practicing the "religion" of psychotherapy and following the "religious" teachings of Freud and Jung. Secondly, the course of conduct must qualify as an expression of that religion and not just an activity that religious people happen to be doing. Thus, driving a [887] Sunday School bus does not constitute a religious practice merely because the bus is owned by a religion, the driver is an ordained minister of the religion, and the bus is taking church members to a religious ceremony. (See *Malloy v. Fong* (1951) 37 Cal.2d 356, 373, 232 P.2d 241 [religious organization held liable for employee's negligent driving]; *Meyers v. S.W. Reg. Con. Ass'n. of Seventh Day Adv.* (1956) 230 La. 310, 88 So.2d 381, 386 [First Amendment does not bar minister's workers' compensation action against church for injuries arising from auto accident which occurred when minister was traveling to church conference].) And, thirdly, the religious expression must not inflict so much harm that there is a compelling state interest in discouraging the practice which outweighs the values served by freedom of religion. Thus, the fact polygamy was a central practice of the Mormon religion was not enough to qualify it for constitutional protection from state governments which desired to ban this practice.

This means we must first ask three questions as to each of the four courses of conduct Wollersheim alleged against Scientology. (1) Does Scientology qualify as a religion? (2) If so, is the course of conduct at issue an expression of the religion of Scientology? (3) If it is, does the public nevertheless have a compelling secular interest in discouraging this course of conduct even though it qualifies as a religious

expression of the Scientology religion? After answering these three questions, however, the special circumstances of this case require us to ask a fourth. Did Wollersheim participate in this course of conduct voluntarily or did Scientology coerce his continued participation through the threat of serious sanctions if he left the religion?

The threshold question for all four courses of conduct is whether Scientology qualifies as a religion. As will be recalled, at the law-and-motion stage, a judge granted summary adjudication on this issue. That court ruled Scientology indeed was a religion. And at the trial stage, another judge reinforced this ruling by submitting the case to the jury with an instruction that Scientology is a religion.

[10] As a result of the law-and-motion judge's decision on this question, evidence was not introduced at trial on the specific issue of whether Scientology is a religion. Given that vacuum of information, it would be presumptuous of this court to attempt a definitive decision on this vital question. We note other appellate courts have observed this remains a very live and interesting question. (See *Founding Church of Scientology v. United States* (D.C.Cir. 1969) 409 F.2d 1146, 1160–1161; *Founding Church of Scientology v. Webster* (D.C.Cir. 1986) 802 F.2d 1448, 1451 ["whether Scientology is a religious organization, a for-profit private enterprise, or something far more [is] extraordinary [is] an intriguing question that this suit does not call upon us to examine...."].) However, we have no occasion to go beyond a review of the summary adjudication decision the trial court reached at the law-and-motion stage. In reviewing this decision, we find that on the evidence before the court the judge properly ruled Scientology qualifies as a religion within the meaning of the Freedom of Religion Clauses of the United States and California Constitutions.

This brings us to the remaining three questions as to each of the four courses of conduct: Is the conduct a "religious practice"? If so, is there a compelling secular interest in requiring compensation for the injuries attributable to that practice? If the constitutional immunity is not overridden by a compelling state interest in the ordinary situation, is it nevertheless stripped away here because the religion coerced the injured member into continuing his participation in the practice?

B. *Even Assuming the Retributive Conduct Sometimes Called "Fair Game" Is a Core Practice of Scientology It Does Not Qualify for Constitutional Protection*

[11] As we have seen, not every religious expression is worthy of constitutional protection. To illustrate, centuries ago the inquisition was one of the core religious practices of the Christian religion in Europe. This religious practice involved torture and execution of heretics and miscreants. (See generally Peters, Inquisition (1988); Lea, The Inquisition of the Middle Ages (1961).) Yet should any church seek to resurrect the inquisition in this country under a claim of free religious expression, can anyone doubt the constitutional authority of an American government to halt the torture and executions? And can anyone seriously question the right of the victims of our hypothetical modern day inquisition to sue their tormentors for any injuries—physical or psychological—they sustained?

We do not mean to suggest Scientology's retributive program as described in the evidence of this case represented a full-scale modern day "inquisition." Nevertheless, there are some parallels in purpose and effect. "Fair game" like the "inquisition" targeted "heretics" who threatened the dogma and institutional integrity of the mother church. Once "proven" to be a "heretic," an individual was to be neutralized. In medieval times neutralization often meant incarceration, torture, and death. (Peters, Inquisition, *supra*, pp. 57, 65–67, 87, 92–94, 98, 117–118, 133–134; Lea, The Inquisition of the Middle Ages, *supra*, pp. 181, 193–202, 232–236, 250–264, 828–829.) As described in the evidence at this trial the "fair game" policy neutralized the "heretic" by stripping this person of his or her economic, political and psychological power. (See, e.g., *Allard v. Church of Scientology*

[889](1976) 58 Cal.App.3d 439, 444, 129 Cal. Rptr. 797 [former church member falsely accused by Church of grand theft as part of "fair game" policy, subjecting member to arrest and imprisonment].)

In the instant case, at least, the prime focus of the "fair game" campaign was against the "heretic" Wollersheim's economic interests. Substantial evidence supports the inference Scientology set out to ruin Wollersheim's photography enterprise. Scientologists who worked in the business were instructed to resign immediately. Scientologists who were customers were told to stop placing orders with the business. Most significantly, those who owed money for previous orders were instructed to renege on their payments. Although these payments actually were going to a factory not Wollersheim, the effect was to deprive Wollersheim of the line of credit he needed to continue in business.

Appellants argue these "fair game" practices are protected religious expression. They cite to a recent Ninth Circuit case upholding the constitutional right of the Jehovah's Witness Church and its members to "shun" heretics from that religion even though the heretics suffer emotional injury as a result. (*Paul v. Watchtower Bible & Tract Soc. of New York, supra*, 819 F.2d 875.) In this case a former Jehovah's Witness sued the church and certain church leaders for injuries she claimed to have suffered when the church ordered all other church members to "shun" her. In the Jehovah Witness religion, "shunning" means church members are prohibited from having any contact whatsoever with the former member. They are not to greet them or conduct any business with them or socialize with them in any manner. Thus, there was a clear connection between the religious practice of "shunning" and Ms. Paul's emotional injuries. Nonetheless, the trial court dismissed her case. The Ninth Circuit affirmed in an opinion which expressly held "shunning" is a constitutionally protected religious practice. "[T]he defendants, ... possess an affirmative defense of privilege—a defense that permits them to engage in the practice of shunning pursuant to their religious beliefs without incurring tort liability." (*Id.* at p. 879.)

We first note another appellate court has taken the opposite view on the constitutionality of "shunning." (*Bear v. Reformed Mennonite Church* (1975) 462 Pa. 330, 341 A.2d 105.) In this case the Pennsylvania Supreme Court confronted a situation similar to *Paul v. Watchtower Bible & Tract Soc. of New York.* The plaintiff was a former member of the Mennonite Church. He was excommunicated for criticizing the church. Church leaders ordered that all members must "shun" the plaintiff. As a result, both his business and family collapsed. The appellate court reversed the trial court's dismissal of the action, holding: "In our opinion, the complaint, ... raises issues that the 'shunning' practice of appellee church and the conduct of the [890]individuals may be an excessive interference within areas of 'paramount state concern,' i.e., the maintenance of marriage and family relationship, alienation of affection, and the tortious interference with a business relationship, which the courts of this Commonwealth *may* have authority to regulate, even in light of the 'Establishment' and 'Free Exercise' clauses of the First Amendment." (*Bear v. Reformed Mennonite Church, supra*, 341 A.2d at p. 107, emphasis in original.)

We observe the California Supreme Court has cited with apparent approval the viewpoint on "shunning" expressed in *Bear v. Mennonite Church, supra*, rather than the one adopted in *Paul v. Watchtower Bible & Tract Soc. of New York, supra.* (See *Molko v. Holy Spirit Assn., supra*, 46 Cal.3d 1092, 1114, 252 Cal.Rptr. 122, 762 P.2d 46.) But even were *Paul v. Watchtower Bible & Tract Soc. of New York* the law of this jurisdiction it would not support a constitutional shield for Scientology's retribution program. In the instant case Scientology went far beyond the social "shunning" of its heretic, Wollersheim. Substantial evidence supports the conclusion Scientology leaders made the deliberate decision to ruin Wollersheim economically and possibly psychologically. Unlike the plaintiff in *Paul v. Watchtower Bible & Tract Soc. of New York*, Wollersheim did

not suffer his economic harm as an unintended byproduct of his former religionists' practice of refusing to socialize with him any more. Instead he was bankrupted by a campaign his former religionists carefully designed with the specific intent it bankrupt him. Nor was this campaign limited to means which are arguably legal such as refusing to continue working at Wollersheim's business or to purchase his services or products. Instead the campaign featured a concerted practice of refusing to honor legal obligations Scientologists owed Wollersheim for services and products they already had purchased.

If the Biblical commandment to render unto Caesar what is Caesar's and to render unto God what is God's has any meaning in the modern day it is here. Nothing in *Paul v. Watchtower Bible & Tract Soc. of New York* or any other case we have been able to locate even implies a religion is entitled to constitutional protection for a campaign deliberately designed to financially ruin anyone—whether a member or non-member of that religion. Nor have we found any cases suggesting the free exercise clause can justify a refusal to honor financial obligations the state considers binding and legally enforceable. One can only imagine the utter chaos that could overtake our economy if people who owed money to others were entitled to assert a freedom of religion defense to repayment of those debts. It is not unlikely the courts would soon be flooded with debtors who claimed their religion prohibited them from paying money they owed to others.

We are not certain a deliberate campaign to financially ruin a former member or the dishonoring of debts owed that member qualify as "religious [891] practices" of Scientology. But if they do, we have no problem concluding the state has a compelling secular interest in discouraging these practices. (See pp. 338–340, *supra*.) Accordingly, we hold the Freedom of Religion guarantees of the U.S. and California Constitutions do not immunize these practices from civil liability for any injuries they cause to "targets" such as Wollersheim.

C. *"Auditing" Is a Constitutionally Protected Religious Practice Where It Is Conducted in a Non-coercive Environment But Is Not Protected Where Conducted Under a Threat of Economic, Psychological and Political Retribution as It Was Here*

[12] Auditing is a process of one-on-one dialogue between a Scientology "auditor" and a Scientology student. The student ordinarily is connected to a crude lie detector, a so-called "E–Meter." The auditor asks probing questions and notes the student's reactions as registered on the E–Meter.

Through the questions, answers, and E-meter readings, the auditor seeks to identify the student's "n-grams" or "engrams." These "engrams" are negative feelings, attitudes, or incidents that act as blockages preventing people from realizing their full potential and living life to the fullest. Since Scientology holds the view people actually have lived many past lives over millions of years they carry "engrams" accumulated during those past lives as well as some from their present ones. Once the auditor identifies an "engram" the auditor and the student work to surface and eliminate it. The goal is to identify and eliminate all the student's engrams so he or she can achieve the state of "clear." Students can pass through several levels of "auditing" en route to ever higher states of "clear."

Auditing performs a similar function for Scientology as sermons and other forms of mass persuasion do for many religions. In those religions, ministers, priests or other clergy preach to the multitude in order to bring their adherents into line with the religion's principles. Scientology instead emphasizes a one-on-one approach—the "auditing" process—to accomplish the same purpose.

At the law-and-motion stage, the trial court granted summary adjudication that "auditing" is a "religious practice" of Scientology. Once again, our review of the trial court decision reveals that on the basis of the evidence before the court on that occasion, the ruling is correct. Thus for

purposes of this appeal we find "auditing" qualifies as a "religious practice" just as Scientology qualifies as a "religion."

Having found for purposes of this appeal that Scientology is a religion and auditing is a religious practice, we must next ask whether the state [892] has a "compelling interest" in awarding compensation for any harm auditing may cause which outweighs the values served by the religious expression guarantees of the constitution.

We first note we have already held there was substantial evidence to support a jury finding that what happened during the "auditing" process, along with Scientology's other conduct toward Wollersheim, caused this particular adherent serious emotional injury. We further found substantial evidence Scientology leaders were aware of Wollersheim's psychological weakness and yet continued practices during auditing sessions which caused the kinds of psychological stress that led to his mental breakdown. Thus, there is adequate proof the religious practice of auditing caused real harm in this instance to this individual and that appellants' outrageous conduct caused that harm. Furthermore, there is sufficient evidence to support a conclusion that despite their knowledge auditing was aggravating Wollersheim's serious psychological problems appellants deliberately insisted he not seek help from professional psychotherapists. None of this, however, means auditing represents such a threat of harm to society that the state has a compelling interest in awarding compensation which overcomes the values served by the religious expression guarantees of the constitution.

To better understand why we conclude *voluntary* auditing may be entitled to immunity from liability for the emotional injuries it causes, consider some analogies. Assume Wollersheim were not a former Scientologist, but a former follower of one of the scores of Christian denominations. Further assume he sued on grounds a preacher's sermons filled him with such feelings of inferiority and guilt his manic-depressive condition was aggravated to the same degree Wollersheim contends auditing aggravated his mental illness in this case. Or assume another Wollersheim sued another church for a similar emotional injury on grounds his mental illness had been triggered by what a cleric told him about his sins during a confession—or series of confessions. It is one of the functions of many religions to "afflict the comfortable"—to deliberately generate deep psychological discomfort as a means of motivating "sinners" to stop "sinning." Whether by "hell fire and damnation" preaching, "speaking in tongues," private chastising, or a host of subtle and not so subtle techniques religion seeks to make us better people.

Many of these techniques are capable of inflicting emotional distress severe enough that it is foreseeable some with psychiatric problems will "crack" or be driven into a deep depression. But the constitution values the good religion does for the many more than the psychological injury it may inflict on the few. Thus, it cannot tolerate lawsuits which might chill religious practices—such as auditing, "hell fire and damnation" preaching, [893] confessions, and the like—where the only harm which occurs is emotional injury to the psychologically weak.

[13] There is an element present in the instant case, however, that reduces the religious value of the "auditing" practiced on Wollersheim and increases its harm to the community. This is the element of coercion. Scientology, unlike most other religions or organizations claiming a religious purpose, uses various sanctions and the threat of sanctions to induce continued membership in the Church and observance of its practices. These sanctions include "fair game", "freeloader debt" and even physical restraint. There was nothing in the evidence presented at this trial suggesting new recruits and members undergoing lower-level "auditing" were subject to sanctions if they decided to leave. Nor was there evidence these recruits or "lower level" auditors would be aware any program of sanctions even existed and thus might be intimidated by it. But there was evidence others, like Wollersheim, who rose

to higher levels of auditing and especially those, like Wollersheim, who became staff members—the rough equivalent of becoming a neophyte priest or minister—were aware of these sanctions and what awaited them if they chose to "defect." Thus, their continued participation in "auditing" and the other practices of Scientology was not necessarily voluntary.

Wollersheim was familiar with the whole spectrum of sanctions and indeed was the target of some during and after his affiliation with Scientology. He first learned of one of these forms of retribution, "fair game," in 1970. He also knew that, despite the Church's public rejection of the fair game practice, it continued to use fair game against targeted ex-Scientologists throughout the 1970's. Under Scientology's "fair game" policy, someone who threatened Scientology by leaving the church "may be deprived of property or injured by any means by a Scientologist.... [The targeted defector] may be tricked, sued or lied to or destroyed."

Wollersheim feared "fair game" would be practiced against him if he refused further auditing and left the Church of Scientology. As described in the previous section, those fears proved to be accurate. Scientology leaders indeed became very upset by his defection and retaliated against his business.

But "fair game" was not the only sanction which Scientology held over Wollersheim's head during his years as an "upper level" auditor and occasional staff member. Scientology also used a tactic called "freeloader debt" as a means of coercing Wollersheim's continued participation in the church and obedience to its practices. "Freeloader debt" was devised by Scientology founder L. Ron Hubbard as a means of punishing members who, inter alia, chose to leave the Church or refused to disconnect from a suppressive person.

"Freeloader debt" was accumulated when a staff member received Church courses, training or auditing at a reduced rate. The Church maintained separate records which listed the discounts allowed. If the member later chose to leave, he or she was presented with a bill for the difference between the full price normally charged to the public and the price originally charged to the member.[2] A person who stayed in the Church for five years could easily accumulate a "freeloader debt" of between $10,000 and $50,000. Wollersheim was familiar with the "freeloader debt" policy as well as the "fair game" policy. He also knew the Church was recording the courses and auditing sessions he was receiving at the discounted rate. The threat of facing that amount of debt represented a powerful economic sanction acting to coerce continued participation in auditing as the core religious practice of the Church of Scientology.

There also was evidence Wollersheim accepted some of his auditing under threat of *physical* coercion. In 1974, despite his repeated objections, Wollersheim was induced to participate in auditing aboard a ship Scientology maintained as part of its Rehabilitation Project Force. The Church obtained Wollersheim's attendance by using a technique dubbed "bait and badger." As the name suggests, this tactic deployed any number of Church members against a recalcitrant member who was resisting a Church order. They would alternately promise the "bait" of some reward and "badger" him with verbal scare tactics. In the instant case, five Scientologists "baited and badgered" Wollersheim continuously for three weeks before he finally gave in and agreed to attend the Rehabilitation Project Force.

But these verbal threats and psychological pressure tactics were only the beginning of Wollersheim's ordeal. While on the ship, Wollersheim was forced to undergo a strenuous regime which began around 6:00 A.M. and continued until 1:00 the next morning. The regime included mornings of

2. During the 1970's a staff member was paid approximately $17 per week for an expected 50 hours of work. In 1973, Wollersheim earned between $10 to $18 per week when he worked at the Celebrity Center as a staff member. This salary was augmented by an occasional $10 bonus.

menial and repetitive cleaning of the ship followed by an afternoon of study or co-auditing. The evenings were spent working and attending meetings or conferences. Wollersheim and others were forced to sleep in the ship's hole. A total of thirty people were stacked nine high in this hole without proper ventilation. During his six weeks under these conditions, Wollersheim lost 15 pounds.

[1895] Ultimately, Wollersheim felt he could bear the regime no longer. He attempted to escape from the ship because as he testified later: "I was dying and losing my mind." But his escape effort was discovered. Several Scientology members seized Wollersheim and held him captive. They released him only when he agreed to remain and continue with the auditing and other "religious practices" taking place on the vessel.

One of the psychiatric witnesses testified that in her opinion Wollersheim's experience on the ship was one of five cataclysmic events underlying her diagnosis of his mental illness and its cause. As the psychiatrist reported, following this incident, Wollersheim felt the Church "broke him." In any event, this episode demonstrated the Church was willing to physically coerce Wollersheim into continuing with his auditing. Moreover they were willing to do so even when it was apparent this practice was causing him serious mental distress and he preferred to cease or at least suspend this particular religious practice. Not only was the particular series of auditing sessions on the ship conducted under threat of physical compulsion, but the demonstrated willingness to use physical coercion infected later auditing sessions. The fact the Church was willing to use physical coercion on this occasion to compel Wollersheim's continued participation in auditing added yet another element to the coercive environment under which he took part in the auditing process.

There was substantial evidence here from which the jury could have concluded Wollersheim was subjecting himself to auditing because of the coercive environment with which Scientology had surrounded him. To leave the church or to cease auditing he had to run the risk he would become a target of "fair game", face an enormous burden of "freeloader debt", and even confront physical restraint. A religious practice which takes place in the context of this level of coercion has less religious value than one the recipient engages in voluntarily. Even more significantly, it poses a greater threat to society to have coerced religious practices inflicted on its citizens.

There are important analogies to *Molko v. Holy Spirit Assn., supra,* 46 Cal.3d 1092, 252 Cal.Rptr. 122, 762 P.2d 46. In *Molko* the California Supreme Court held a religious organization could be held civilly liable for using deception and fraud to *seduce* new recruits *into the church.*[3] In that case the church concealed from new [1896] recruits the fact they were enlisting in the Unification Church. The plaintiffs argued the Unification Church psychologically and physically coerced them into accepting the Church and, therefore, they were unable to refuse formally joining once the Church's true identity was revealed. (*Id.* at pp. 1108–1109, 252 Cal.Rptr. 122, 762 P.2d 46.) The Supreme Court agreed and further concluded there was no constitutional infirmity to bar the action.

"We conclude, ... that although liability for deceptive recruitment practices imposes a marginal burden on the Church's free exercise of religion, the burden is justified by the compelling state interest in protecting individuals and families from the substantial threat to public safety, peace and order posed by the fraudulent induction of unconsenting individuals into an atmosphere of coercive persuasion." (*Id.* at p. 1118, 252 Cal.Rptr. 122, 762 P.2d 46.)

3. In *Molko,* two plaintiffs brought actions against the Unification Church for, inter alia, fraud and intentional infliction of emotional distress based upon the Unification Church's initial misrepresentations concerning its religious affiliation. The Supreme Court held the First Amendment did not bar the plaintiffs' claims to the extent they were based upon actual coercive conduct by the Unification Church as opposed to merely the threat of divine retribution should the plaintiffs leave.

Here Scientology used *coercion*—"fair game," "freeloader debt," and in this instance, at least, physical restraint, along with the threat one or more of these sanctions will be deployed—to prevent its members from *leaving* the Church. This coercion is similar to the coercion found in *Molko* and far different from the threats of *divine* retribution our Supreme Court held was non-actionable. (*Id.* at pp. 1120, 1122, 252 Cal.Rptr. 122, 762 P.2d 46 ["To the extent the claims are based merely on threats of divine retribution if [the plaintiffs] left the church, they cannot stand"].) Instead, Scientology promised—and in this case delivered—retribution in the here and now.

In *O'Moore v. Driscoll* (1933) 135 Cal. App. 770, 28 P.2d 438 cited with approval by the California Supreme Court in *Molko v. Holy Spirit Assn., supra*, 46 Cal.3d 1092, 1114, 252 Cal.Rptr. 122, 762 P.2d 46, a Catholic priest sued a Catholic organization and an ordained priest for false imprisonment when the plaintiff was restrained in an asylum run by the Catholic Church to compel his confession to criminal acts. The practice of confessing one's sins is an established religious practice of the Catholic church. But that did not immunize the defendants from liability for harm the plaintiff suffered where the religious practice was imposed on him in a coercive environment. (*Id.* at p. 774, 28 P.2d 438.)

In the instant case except for the experience on the ship the coercion was more subtle than physical restraint. Yet the threat of "fair game" and "freeloader debt" and even the possibility of future physical restraint loomed over Wollersheim whenever he contemplated leaving Scientology and terminating auditing or the other practices of that religion.

It is not only the acts of coercion themselves—the sabotage of Wollersheim's business and the episode of captivity on the ship—which are actionable. These acts of coercion and the threat of like acts make the Church's [897] other harmful conduct actionable as well. No longer is Wollersheim's continued participation in auditing (or for that matter, his compliance with the "disconnect" order) merely his *voluntary* participation in Scientology's religious practices. The evidence establishes Wollersheim was coerced into remaining a member of Scientology and continuing with the auditing process. Constitutional guarantees of religious freedom do not shield such conduct from civil liability. We hold the state has a compelling interest in allowing its citizens to recover for serious emotional injuries they suffer through religious practices they are coerced into accepting. Such conduct is too outrageous to be protected under the constitution and too unworthy to be privileged under the law of torts.

We further conclude this compelling interest outweighs any burden such liability would impose on the practice of auditing. We concede as the California Supreme Court did in *Molko* that allowing tort liability for this conduct imposes some burden on appellants' free exercise of this religion.[4] Despite the possibility of liability Scientologists can still *believe* it serves a religious purpose to impose and threaten to impose various sanctions on staff members or upper level auditors who might leave the church or cease its core religious practices. But it does place a burden on Scientologists should they act on that belief. Scientology would be subject to possible monetary loss if someone suffers severe psychological harm during auditing where that auditing is conducted under the threat of these sanctions. Likewise, Scientology may lose some staff members and upper level auditors who would not continue in the Church or continue to submit to the core practice of auditing except for their fears of retribution.

4. "While such liability does not impair the Church's right to believe in recruiting through deception, its very purpose is to discourage the Church from putting such belief into practice by subjecting the church to possible monetary loss for doing so. Further, liability presumably impairs the Church's ability to convert nonbelievers, because some potential members who would have been recruited by deception will choose not to associate with the Church when they are told its true identity." (*Molko v. Holy Spirit Assn., supra*, 46 Cal.3d 1092, 1117, 252 Cal.Rptr. 122, 762 P.2d 46.)

Like the Supreme Court in *Molko*, however, we find these burdens "while real, are not substantial" and, moreover, are the minimum required to achieve the state interest. To borrow from the high court's language in *Molko:* "Being subject to liability [for coerced auditing] does not in any way or degree prevent or inhibit [Scientologists] from operating their religious communities, worshipping as they see fit, freely associating with one another, selling or distributing literature, proselytizing on the street, soliciting funds, or generally spreading [L. Ron Hubbard's] message among the population. It certainly does not, ... compel [Scientologists] to perform acts 'at odds with fundamental tenets of their religious beliefs.' [Citation omitted.]" (*Molko v. Holy Spirit Assn., supra,* 46 Cal.3d 1092, 1117, 252 Cal.Rptr. 122, 762 P.2d 46.)

[898]Most significantly, by imposing liability in the instant case we "in no way or degree prevent or inhibit" Scientology from continuing the free exercise of the religious practice of auditing. Returning to the words of the Supreme Court: "At most, it potentially closes one questionable avenue for coercing certain members to remain in the church and to continue its core practices such as auditing." (46 Cal.3d at p. 1117, 252 Cal.Rptr. 122, 762 P.2d 46.)

D. *The "Disconnect" Policy Is Not a Constitutionally Protected Religious Practice in the Circumstances of This Case*

[14] Substantial evidence supports the conclusion Scientology encouraged Wollersheim to "disconnect" from family members, including his wife and parents. Furthermore, substantial evidence supports the conclusion Scientology has a general policy of encouraging members to "disconnect" from non-Scientologists who oppose Scientology or express reservations about its teachings.

The first question is whether the "disconnect" policy qualifies as a "religious practice" of Scientology. The trial court did not grant summary adjudication on this factual issue. Nonetheless, we find the evidence supported the conclusion disconnect is a "religious practice." "Disconnect" is similar in purpose and effect to the "shunning" practiced by Jehovah's Witnesses and Mennonites, among others. It also shares some attributes with the remote monasteries common to many other religions. All of these practices serve to isolate members from those, including family members, who might weaken their adherence to the religion. Courts have held these policies qualify as "religious practices" of other religions. (See, e.g., *Paul v. Watchtower Bible & Tract Soc. of New York, supra,* 819 F.2d 875, 879–880; *Rasmussen v. Bennet* (Mont.1987) 741 P.2d 755 [Church statements condemning plaintiffs' conduct and calling for shunning were privileged under the First Amendment].) We see no justification for treating Scientology's "disconnect" policy differently and thus hold it is a "religious practice".

We recognize the "shunning" cases have involved claims brought by former church members *whom other family members were ordered to shun.* The instant case, in contrast, involves a cause of action brought by a former church member *ordered to shun the rest of his family* not the other way around. In the circumstances of this case this is a distinction without a difference. Here appellants caused Wollersheim to isolate himself from his parents, wife and other family members even though appellants had reason to know it would inflict serious emotional injury on him. The injury to him and to the family was just as severe as if his family had "shunned" him.

We need not and do not reach the question whether the practice of "disconnect" is constitutionally protected religious activity in ordinary circumstances.[899] (Contrast *Paul v. Watchtower Bible & Tract Soc. of New York, supra,* 819 F.2d 875 [religion cannot be held civilly liable to shunned former member because "shunning" is constitutionally protected] with *Bear v. Reformed Mennonite Church, supra,* 341 A.2d 105 [religion may be civilly liable to shunned former member because "shunning" must yield to compelling state interest in promoting family relations].) Wheth-

er or not the "disconnect" policy is constitutionally protected when practiced in a voluntary context it is not so protected if practiced in the coercive environment appellants imposed on Wollersheim. The reasons are the same as apply to "auditing." (See p. 337, *supra.*) Substantial evidence supports the finding Scientology created this coercive environment and Wollersheim continued to submit to the practices of the church such as "disconnect" because of that coercion. Furthermore, the evidence in the instant case is sufficient to support a factual finding appellants imposed the "disconnect" policy on Wollersheim with the knowledge he was psychologically susceptible and therefore would suffer severe emotional injury as a result. Accordingly, in the circumstances of this case, the free exercise clause did not immunize appellants from liability for the "disconnect" policy practiced on respondent.

E. *Scientology's Improper Disclosure of Information Wollersheim Gave During Confidential Religious Sessions Is Not Religious Expression Immunized From Liability by the Constitution*

There is substantial evidence Wollersheim divulged private information during auditing sessions under an explicit or implicit promise the information would remain confidential. Moreover, there is substantial evidence Scientology leaders and employees shared this confidential information and used it to plan and implement a "fair game" campaign against Wollersheim. Scientology argues there also is substantial evidence in the record supporting its defense that Scientology leaders and employees shared this confidential information only in accordance with normal procedures and for the purpose of gaining the advice and assistance of more experienced Scientologists in evaluating Wollersheim's auditing sessions. However, the jury was entitled to disregard this innocent explanation and to believe Wollersheim's version of how and why Scientology divulged information he had supplied in confidence.

[15] The intentional and improper disclosure of information obtained during auditing sessions for non-religious purposes can hardly qualify as "religious expression." To clarify the point, we turn once again to a hypothetical situation which presents a rough analogy under a traditional religion. Imagine a stockbroker had confessed to a cleric in a confessional that he had engaged in "insider trading." Sometime later this same stockbroker leaves 1900the church and begins criticizing it and its leadership publicly. To discredit this critic, the church discloses the stockbroker has confessed he is an insider trader. This disclosure might be said to advance the interests of the cleric's religion in the sense it would tend to discourage former members from criticizing the church. But to characterize this violation of religious confidentiality as "religious expression" would distort the meaning of the English language as well as the United States Constitution. This same conclusion applies to Scientology's disclosures of Wollersheim's confidences in the instant case. And, since these disclosures do not qualify as "religious expression" they do not qualify for protection under the freedom of religion guarantees of the constitution. (See Discussion at pp. 340–341, *supra.*)

III. THE CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL INJURY MUST BE REVERSED

[16] For reasons set forth in section II, we have concluded Scientology is not constitutionally immunized from civil liability for its cumulative course of conduct to intentionally inflict emotional injury on Wollersheim. However, this course of conduct does not supply a suitable predicate for a cause of action based on *negligent* infliction of emotional injury. These actions are potentially actionable only when they are driven by an animus which can properly qualify them as "outrageous conduct." That is, they must be done for the purpose of emotionally injuring the plaintiff, or at the least with reckless disregard about their adverse impact on plaintiff's mental health. (*Nally v. Grace Communi-*

ty Church, supra, 47 Cal.3d 278, 300, 253 Cal.Rptr. 97, 763 P.2d 948; *Miller v. National Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1487, 232 Cal.Rptr. 668.)

We have held in the prior section that Scientology and its leaders indeed engaged in these actions with an intent to emotionally injure Wollersheim. But this intentional activity was alleged in the intentional infliction of emotional injury count and was tried under that count. The negligence count, on the other hand, of necessity alleges a lesser degree of culpability and can be sustained only if the defendant could be liable even if the emotional injuries were caused by completely unintentional, merely negligent acts or omissions. (See *Slaughter v. Legal Process Courier Service* (1984) 162 Cal.App.3d 1236, 1249, 209 Cal.Rptr. 189; 6 Witkin, Summary of Cal.Law (9th ed. 1988) Torts, § 838, p. 195.)

In this context, Scientology is responsible only if it or any other religion could be held liable where through inadvertence something it or its leaders did damaged someone's business and thereby caused the businessman emotional injury. Or if it or any other religion could be held liable where it inadvertently revealed some information a member had disclosed in [901] confidence as part of a religious practice like auditing or a confession. Or if it or another religion could be held liable where its functionaries inadvertently said something during auditing or a sermon or a confession which triggered a listener's nascent mental illness.

At bottom, this question of duty is a matter of weighing competing public policy considerations. (*Dillon v. Legg* (1968) 68 Cal.2d 728, 734, 69 Cal.Rptr. 72, 441 P.2d 912; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 572, fn. 6, 224 Cal.Rptr. 664, 715 P.2d 624.)[5] On balance, the religious freedom consideration outweighs any concern about spreading the cost of emotional injury, reducing the frequency of such emotional injuries, and the like. It is one thing to say we will impose liability when a religious organization intentionally or recklessly sets out to ruin a business or to reveal confidential information or to "audit" mercilessly or to "disconnect" a psychologically weak person from his family and thereby succeeds in emotionally injuring a member or former member of that religion. It is quite another to impose liability for negligent acts which inadvertently cause the same types of injuries. (See *Coon v. Joseph* (1987) 192 Cal.App.3d 1269, 1273, 237 Cal.Rptr. 873.)

Since we hold religious organizations owe no duty to members or former members with respect to these forms of injury, the cause of action for negligent infliction of emotional injury must be reversed. We need not, however, reverse the entire judgment.

Here, the jury found the Church liable for both negligent and intentional infliction of emotional distress. As we discussed above, there is substantial evidence to support a finding on the intentional infliction theory. We may fairly presume any damages awarded on the negligence theory are subsumed in the award for intentional infliction of emotional distress. Accordingly, any error in allowing the jury to consider the negligence theory does not affect the judgment. (See *Vahey v. Sacia* (1981) 126 Cal.App.3d 171, 179–180, 178 Cal.Rptr. 559; *Bacciglieri v. Charles C. Meek Milling Co.* (1959) 176 Cal.App.2d 822, 826, 1 Cal.Rptr. 706.)

IV. THE TRIAL COURT PROPERLY DENIED APPELLANTS' MOTIONS TO DISMISS FOR FAILURE TO FILE BEFORE THE STATUTE OF LIMITATIONS HAD EXPIRED ON WOLLERSHEIM'S CAUSES OF ACTION

Scientology argues on appeal, as it did at virtually every opportunity below, that Wollersheim's causes of action are barred by the statute of [902] limitations. At each and every juncture the various trial judges

5. "'[D]uty' is not an immutable fact of nature '"but only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection."' [Citation.]" (*Ballard v. Uribe, supra*, 41 Cal.3d at p. 572, fn. 6, 224 Cal.Rptr. 664, 715 P.2d 624.)

who heard these arguments rejected them. These judges ruled correctly that Wollersheim's causes of action were subject to the discovery rule. (3 Witkin, Cal.Procedure (3d ed. 1985) Actions, § 356, p. 383.) The issue in each instance, thus, was *when* Wollersheim discovered, or should have discovered, all of the elements of his cause of action against Scientology. (*See Leaf v. City of San Mateo* (1980) 104 Cal.App.3d 398, 407–408, 163 Cal.Rptr. 711.) The trial judges properly ruled this issue, in turn, was a jury question. (*Id.* at p. 409, 163 Cal.Rptr. 711.)

On appeal, this court is bound to uphold the jury's resolution of these factual questions unless we determine the findings are not supported by substantial evidence. After a careful review of the evidence, we conclude these findings about the timeliness of Wollersheim's filing of this case are supported by substantial evidence. Consequently, we affirm the rulings by the judges below and, furthermore, we likewise affirm the factual findings the jury impliedly made that Wollersheim did not discover and should not have discovered his causes of action until a time within the statutory period.

V. THE TRIAL COURT DID NOT COMMIT INSTRUCTIONAL ERROR OR EVIDENTIARY ERROR DURING THIS FIVE-MONTH TRIAL WHICH DENIED APPELLANTS A FAIR TRIAL OR DUE PROCESS OF LAW

Appellants' final contention is that they were denied a fair trial and due process of law because of various instructional and evidentiary rulings the court made during this five-month trial. Considering the length of the trial it is surprising appellants were able to identify so few questionable rulings.

[17] Appellants first complain the trial court erroneously denied two instructions they requested. The first of these instructions restated the elements of the cause of action for intentional infliction of emotional distress or outrageous conduct with a slant favoring appellants' position.[6]

[1903] As requested the instruction implied the jury was to disregard evidence of appellants' acts which did not fit precisely under the courses of conduct as they defined them. Actually the plaintiffs' causes of action were broader in many respects than the descriptions the appellants requested. Moreover, some of the evidence introduced at the trial related to acts relevant to issues of appellants' state of mind (intent, motivation, and the like) and whether respondent was voluntarily participating in Scientology's practices or was doing so within a coercive environment. Accordingly, the instruction as requested would have been misleading to the jury. The trial court gave an instruction which set forth the elements of the cause of action. Any amplification of that instruction should have been more accurate than the one appellants requested and less misleading as to the full scope of the jury's range of inquiry. Thus it was not error to refuse to give this instruction.

[18] Appellants also complain about the refusal of one of their requested instructions ordering the jury in very specific

6. The requested instruction reads:
"Plaintiff's claim for intentional infliction of emotional distress, or outrageous conduct, is divided into several parts. [¶] First, plaintiff's claim that defendant engaged in outrageous conduct by subjecting plaintiff to its practice of auditing—which, as I shall instruct you, is the central religious practice of the religion of Scientology. [¶] Second, plaintiff claims that defendant caused plaintiff to separate from his family and friends as a condition for remaining in Scientology. [¶] Third, plaintiff claims that defendant 'attacked plaintiff's business' and induced those of his employees who were Scientologists to leave his employ. [¶] Fourth, plaintiff claims that defendant disclosed his auditing files in disregard of alleged promises of confidentiality to persons not authorized to receive them. [¶] All of these acts were allegedly undertaken to inflict severe emotional distress upon the plaintiff. [¶] The plaintiff is restricted in this case to the claims he set forth in his complaint. Evidence of any purported acts of the defendant not relating to the four categories I have just described to you may not be considered in determining whether plaintiff has established that defendant committed the tort of intentional infliction of emotional distress [App. A306–07]."

fashion to disregard evidence presented which was relevant to the non-suited fraud counts. Again, the requested instruction was stated in overbroad terms and unduly slanted in appellants' direction. For instance, as requested, it instructed the jury that "it must disregard evidence presented in this trial regarding statements purportedly made to [the plaintiff] to induce his participation in defendant church." If given, this instruction could have misled the jury into believing it must disregard evidence which provided context for the intentional infliction count or which went to the presence or absence of coercion and appellants' state of mind. So once again it was not error to refuse these instructions. (See *Wank v. Richman & Garrett* (1985) 165 Cal.App.3d 1103, 1113, 211 Cal.Rptr. 919; *Lubek v. Lopes* (1967) 254 Cal.App.2d 63, 73, 62 Cal.Rptr. 36.)

In any event, on reviewing the total evidence offered in this trial, we find that even if it were error to refuse these instructions that error was not prejudicial. (*Henderson v. Harnischfeger* (1974) 12 Cal.3d 663, 670, 117 Cal.Rptr. 1, 527 P.2d 353; *Williams v. Carl Karcher Enterprises, Inc.* (1986) 182 Cal.App.3d 479, 489, 227 Cal.Rptr. 465; see 9 Witkin, Cal.Procedure, *supra*, Appeal, § 352, pp. 355–356.) We cannot say that the giving of these instructions would have substantially enhanced the chances appellants would have prevailed.

[19] Appellants likewise complain about evidentiary rulings. Although they mention only a handful of specific incidents, they accuse the judge of admitting a mass of prejudicial evidence about actions Scientology took toward third [904] persons. In their brief appellants concede this evidence was admissible under Evidence Code section 1101(b) as proof of "intent" and "malice." [7] But they ask us to reverse the trial court under Evidence Code section 352 on grounds the relevance of this evidence was overwhelmed by its prejudicial effect.[8]

In reviewing the trial court's exercise of its discretion under section 352, appellate courts traditionally give great deference to the trial court's evaluation of relevance versus prejudice. (See *People v. Mota* (1981) 115 Cal.App.3d 227, 234, 171 Cal. Rptr. 212; 1 Johnson, Cal.Trial Guide (1988) § 22.40, p. 22–43.) In the instant case we do not find an abuse of discretion. Much of the evidence appellants object to was highly relevant to show the network of sanctions and coercive influences with which Scientology had surrounded Wollersheim. Much of the rest was highly relevant to show Wollersheim's state of mind while undergoing audit, disconnect and the like or appellants' state of mind, that is, their intent, malice, motives, and the like. Whatever prejudice to appellants may have accompanied introduction of this evidence it does not "substantially outweigh" the probative value of the evidence to important issues in this case.

Finally, appellants complain about the alleged prejudicial conduct of Wollersheim's counsel during the trial and closing argument. As was true of their claims of instructional and evidentiary evidence, appellants provide us with only a few examples of alleged prejudicial error and imply these are but the tip of the iceberg. They confine themselves to this handful of incidents either because no other potentially prejudicial incidents occurred or because they expect this court to do their job by scouring the 25,000 page record for other examples to bolster their claim of error. If what appellants set forth in their brief represent the only incidents they allege as prejudicial

7. "Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act." (Evid.Code, § 1101, sub. (b).

8. "The court in its discretion may exclude evidence if its probative value is *substantially outweighed* by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid.Code, § 352, italics added.)

conduct, we find them insufficient to justify reversal under applicable standards of prejudice. (*Garden Grove School Dist. v. Hendler* (1965) 63 Cal.2d 141, 144, 45 Cal.Rptr. 313, 403 P.2d 721 [attorney misconduct only requires reversal if "it is reasonable to conclude that a verdict more favorable to defendants would have been reached but for the error"]; see 9 Witkin, Cal.Procedure, *supra*, § 340, p. 346.) And if these brief examples were only an invitation to do 905 appellants' work in identifying prejudicial error in their opposing attorney's conduct, we decline that invitation. (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 139, 144 Cal.Rptr. 710 [" 'The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment' "]; *Wint v. Fidelity & Casualty Co.* (1973) 9 Cal.3d 257, 265, 107 Cal.Rptr. 175, 507 P.2d 1383.)

VI. THE GENERAL DAMAGES AND PUNITIVE DAMAGES THE JURY AWARDED ARE EXCESSIVE FOR THE INTENTIONAL INFLICTION OF EMOTIONAL INJURY COUNT AND THUS THOSE DAMAGE AWARDS MUST BE REDUCED

In the previous section, we concluded the allegations which are supported by substantial evidence are enough to sustain a cause of action for intentional infliction of emotional injury against Scientology. But that conclusion does not determine whether the proved allegations support the level of damages the jury awarded under this cause of action. We turn to that issue now.

We are only concerned now with whether a reasonable juror could have found this level of "outrageous" conduct inflicted $5 million worth of emotional injury on Wollersheim. Similarly, we ask whether this level of "outrageous" conduct and Scientology's degree of intent in carrying it out warrant $25 million in punitive damages. We conclude these awards are excessive for the conduct alleged and proved in this case.

An award for compensatory damages will be reversed or reduced "upon a showing that it is so grossly disproportionate to any reasonable view of the evidence as to raise a strong presumption that it is based upon prejudice or passion." (*Koyer v. McComber* (1938) 12 Cal.2d 175, 182, 82 P.2d 941; accord *Schroeder v. Auto Driveaway Co.* (1974) 11 Cal.3d 908, 919, 114 Cal.Rptr. 622, 523 P.2d 662 ["an appellate court may reverse an award only ' "When the award as a matter of law appears excessive, or where the recovery is so grossly disproportionate as to raise a presumption that it is the result of passion or prejudice" ' [Citations]"]; *Fagerquist v. Western Sun Aviation, Inc.* (1987) 191 Cal.App.3d 709, 727, 236 Cal.Rptr. 633; see 8 Witkin, Cal. Procedure, *supra*, Attack on Judgment in Trial Court, § 46, p. 446.) Even under this stringent standard, it is manifest the jury's award here is excessive since it is so grossly disproportionate to the evidence concerning Wollersheim's damages.

[20] Wollersheim's psychological injury although permanent and severe is not totally disabling. Moreover, even Wollersheim admits Scientology's conduct 906 only aggravated a pre-existing psychological condition; Scientology did not create the condition. While the jury awarded Wollersheim $5 million in compensatory damages, we determine the evidence only justifies an award of $500,000.

[21] "It is well established that a reviewing court should examine punitive damages and, where appropriate, modify the amount in order to do justice." (*Gerard v. Ross* (1988) 204 Cal.App.3d 968, 980, 251 Cal.Rptr. 604; *Allard v. Church of Scientology, supra*, 58 Cal.App.3d at p. 453, 129 Cal.Rptr. 797.) In reviewing a punitive damages award, the appellate court applies a standard similar to that used in reviewing compensatory damages, i.e., whether, after reviewing the entire record in the light most favorable to the judgment, the award was the result of passion or prejudice. (*See Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 64, 118 Cal.Rptr. 184, 529 P.2d 608; *Devlin v.*

Kearny Mesa AMC/Jeep/Renault, Inc. (1984) 155 Cal.App.3d 381, 388, 202 Cal. Rptr. 204.) However, the test here is somewhat more refined, employing three factors to evaluate the propriety of the award.

[22] The first factor is the degree of reprehensibility of the defendant's conduct. (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 928, 148 Cal.Rptr. 389, 582 P.2d 980.) "[C]learly, different acts may be of varying degrees of reprehensibility, and the more reprehensible the act, the greater the appropriate punishment, assuming all other factors are equal." (*Ibid.*)

The second factor is the relationship between the amount of the award and the actual harm suffered. (*Ibid.; Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 867, 237 Cal.Rptr. 282.) This analysis focuses upon the ratio of compensatory damages to punitive damages; the greater the disparity between the two awards, the more likely the punitive damages award is suspect. (*Seeley v. Seymour, supra*, 190 Cal.App.3d at p. 867, 237 Cal.Rptr. 282; see *Little v. Stuyvesant Life Ins. Co.* (1977) 67 Cal. App.3d 451, 469–470, 136 Cal.Rptr. 653.)

Finally, a reviewing court will consider the relationship of the punitive damages to the defendant's net worth. (*Neal v. Farmers Ins. Exchange, supra*, 21 Cal.3d at p. 928, 148 Cal.Rptr. 389, 582 P.2d 980; *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc., supra*, 155 Cal.App.3d at p. 390, 202 Cal.Rptr. 204.) In applying this factor courts must strike a proper balance between inadequate and excessive punitive damage awards. "While the function of punitive damages will not be served if the wealth of the defendant allows him to absorb the award with little or no discomfort, the function also will not be served by an award which is larger than necessary to properly punish and deter." (*Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc., supra*, 155 Cal.App.3d at p. 391, 202 Cal. Rptr. 204.)

[23] [1907]As to the punitive damage award, we find it is not commensurate with Scientology's conduct *in this case*. This is not a situation where the centerpiece of the case involved a Church-ordered physical beating or theft or criminal fraud against Wollersheim. The "outrageous conduct" was less outrageous and more subtle than that. We further note Wollersheim's counsel in the full flood of his emotional summation at the conclusion of this lengthy trial only deigned to urge the jury to return punitive damages of *as much as* "six or seven million dollars."

The evidence admitted at trial supported the finding the appellant church had a net worth of $16 million at the time of trial. Accepting these figures as true, the jury awarded Wollersheim *150 percent of* appellant's net worth in punitive damages alone —195 percent if compensatory damages are included. This appears not just excessive but preposterous. (*Seeley v. Seymour, supra*, 190 Cal.App.3d at p. 869, 237 Cal.Rptr. 282 [punitive damages reversed; award was 200 percent of defendant's net worth]; *Burnett v. National Enquirer, Inc.* (1983) 144 Cal.App.3d 991, 1012, 193 Cal.Rptr. 206 [punitive damages reduced; initial award was 35 percent of defendant's net worth]; *Egan v. Mutual of Omaha Insurance Co.* (1979) 24 Cal.3d 809, 824, 169 Cal.Rptr. 691, 620 P.2d 141 [punitive damages reversed; award was 58 percent of defendant's net income]; *Allard v. Church of Scientology, supra*, 58 Cal. App.3d at pp. 445–446, 453, 129 Cal.Rptr. 797 [punitive damages reversed; award was 40 percent of defendant's net worth]; compare *Devlin v. Kearny AMC/Jeep/Renault, Inc., supra*, 155 Cal.App.3d at pp. 391–392, 202 Cal.Rptr. 204 [punitive damages affirmed where award was 17.5 percent of defendant's net worth]; *Schomer v. Smidt* (1980) 113 Cal.App.3d 828, 836–837, 170 Cal.Rptr. 662 [punitive damages affirmed; award was 10 percent of defendant's net worth]; *Downey Savings & Loan Assn. v. Ohio Casualty Ins. Co.* (1987) 189 Cal.App.3d 1072, 1100, 234 Cal. Rptr. 835 [punitive damages affirmed; award was 7.2 percent of defendant's net income].) We find it especially excessive given the nature of the "outrageous conduct" in this particular case. Accordingly

we reduce the punitive damage award to $2 million.

DISPOSITION

The judgment is reversed as to the cause of action for negligent infliction of emotional injury. The judgment as to the cause of action for intentional infliction of emotional injury is modified to reduce the compensatory damages to $500,000 and the punitive damages to $2 million. In all other |908respects the judgment is affirmed. Each party to bear its own costs on appeal.

LILLIE, P.J., and FRED WOODS, J., concur.

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|139The PEOPLE, Plaintiff and Appellant,

v.

Frank Jose TERRONES, Defendant and Respondent.

No. B037713.

Court of Appeal, Second District, Division 7.

July 18, 1989.

Review Denied Nov. 16, 1989.

Defendant's pretrial motion to quash search warrant and suppress evidence was granted by the Superior Court, Los Angeles County, John A. Torribio, Temporary Judge,* and State appealed. The Court of Appeal, Lillie, P.J., held that: (1) sufficient probable cause existed to justify issuance of warrant, and (2) even if there was insufficient probable cause, police officer relied on search warrant in good faith.

Reversed.

Johnson, J., filed dissenting opinion.

* Pursuant to Cal. Const., art. VI, § 21.

1. Searches and Seizures ⇐108

Court cannot resort to facts outside affidavit to determine whether it furnishes probable cause for issuance of search warrant.

2. Criminal Law ⇐394.6(4)

Affiant's testimony at hearing on suppression motion cannot supply probable cause for issuance of search warrant.

3. Searches and Seizures ⇐119

Affidavit submitted in support of search warrant which indicated that information was given by "citizen informants" sufficiently indicated that affiant knew informants' names and thus presumption of reliability attaching to citizen informants applied; affidavit did not characterize informants as anonymous telephone callers.

4. Searches and Seizures ⇐119

Even if characterization of informants in affidavit submitted in support of search warrant as "citizen informants" did not eliminate necessity of showing some degree of reliability, affidavit contained sufficient facts to justify inference that citizen informants were reliable thus providing probable cause for search warrant; basis of their knowledge was personal observation, there was no evidence of ulterior motives on part of informants, and statements were against informants' penal interests.

5. Criminal Law ⇐394.4(6)

Even if there had not been substantial basis for magistrate's probable cause determination in issuing search warrant, police officer relied on search warrant in good faith; officer did not seek search warrant after first informant had come forward, but obtained four different, but mutually supporting, sources of information concerning their narcotics activities at defendant's residence.

|143Ira Reiner, Dist. Atty., Maurice H. Oppenheim, Eugene D. Tavris, and Donald J. Kaplan, Deputy Dist. Attys., for plaintiff and appellant.